Supreme Court, U.S.
FILED

941421 FEB 23 1995

OFFICE OF THE CLERK

No. 94-

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ERNEST D. SUGGS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petiton for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

LARRY D. SIMPSON
KITCHEN, JUDKINS, SIMPSON & HIGH
P.O. Box 10368
Tallahassee, Florida 32302
(904) 222-6040

Counsel for Petitioner,
Ernest D. Suggs

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208

1 copy

QUESTIONS PRESENTED

(I)

WAS THERE AN ILLEGAL ARREST BASED ON THIS COURT'S PRECEDENT OF DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983), WHEN THE PETITIONER WAS TRANSPORTED TO A POLICE SUBSTATION WITHOUT PROBABLE CAUSE AFTER BEING STOPPED AND QUESTIONED BY POLICE OFFICERS?

(II)

ARE CONSENTS TO SEARCH GIVEN BY THE PETITIONER AFTER BEING TRANSPORTED TO THE POLICE SUBSTATION THE PRODUCT OF PETITIONER'S ILLEGAL ARREST?

(III)

WERE THE RESULTING SEARCH WARRANTS AND EVIDENCE FOUND PURSUANT THERETO THE FRUIT OF ILLEGAL POLICE CONDUCT WHICH SHOULD HAVE BEEN SUPPRESSED?

(IV)

IS IT SUFFICIENT FOR POLICE OFFICERS TO REMAIN QUIET AND NOT INFORM A SUSPECT OF THE RIGHT TO LEAVE IN ORDER TO UNDERMINE THIS COURT'S PRECEDENT ENUNCIATED IN DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983)?

TABLE OF CONTENTS

QUESTIONS PRESENTED I

TABLE OF CONTENTS . . . . . II & III

TABLE OF AUTHORITIES . . . . . IV, V, VI & VII

CITATION TO OPINION BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3-7

REASONS FOR GRANTING THE WRIT . . . . 8, 18, 24 & 27

(I)

THERE WAS AN ILLEGAL ARREST BASED ON THIS COURT'S PRECEDENT OF DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983), WHEN THE PETITIONER WAS TRANSPORTED TO A POLICE SUBSTATION WITHOUT PROBABLE CAUSE AFTER BEING STOPPED AND QUESTIONED BY POLICE OFFICERS 8

(II)

THE CONSENTS TO SEARCH GIVEN BY THE PETITIONER AFTER BEING TRANSPORTED TO THE POLICE SUBSTATION WERE THE PRODUCT OF PETITIONER'S ILLEGAL ARREST 18

(III)
THE RESULTING SEARCH WARRANTS WERE THE FRUIT OF ILLEGAL POLICE CONDUCT AND THE EVIDENCE SEIZED THEREBY SHOULD HAVE BEEN SUPPRESSED 24

(IV)
IT IS NOT SUFFICIENT FOR POLICE OFFICERS TO REMAIN QUIET AND NOT INFORM A SUSPECT OF THE RIGHT TO LEAVE IN ORDER TO UNDERMINE THIS COURT'S PRECEDENT ENUNCIATED IN DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983) 27

CONCLUSION 29

CERTIFICATE OF SERVICE 29

APPENDIX

FLORIDA SUPREME COURT OPINION ..... A

FLORIDA SUPREME COURT ORDER DENYING REHEARING ..... B

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS C

TRANSCRIPT OF MOTION TO SUPPRESS HEARING ..... D

AFFIDAVITS FOR SEARCH WARRANTS ..... E

TABLE OF AUTHORITIES

CASES:

Brinegar v. United States
338 U.S. 160, 176, 69 S. Ct. 1302,
93 L. Ed. 2d 1879 (1949), ... 13

Brown v. Illinois
422 U.S. 590, 95 S. Ct. 2674,
45 L. Ed. 2d 705 (1975), ... 12, 18, 19, 27 & 28

Bumper v. North Carolina
391 U.S. 543, 88 S. Ct. 1788,
20 L. Ed. 2d 797 (1968), ... 18 & 21

Dunaway v. New York
442 U.S. 200, 99 S. Ct. 2248,
60 L. Ed. 2d 824 (1979), . 8, 12, 13, 14, 16, 17 & 27

Florida v. Bostick
501 U.S. 429, 111 S. Ct. 2382,
115 L. Ed. 2d 389 (1991), ... 21 & 27

Florida v. Royer
460 U.S. 491, 103 S. Ct. 1319,
75 L. Ed. 2d 229 (1983),
. . . . . 8, 11, 14, 15, 16, 17, 18, 21, 27 & 28

Hayes v. Florida
470 U.S. 811, 84 L. Ed. 2d 705,
105 S. Ct. 1643 (1985) . . . . . 9 & 10

Schneckloth v. Bustamonte
412 U.S. 218, 93 S. Ct. 2041,
36 L. Ed. 2d 854 (1973), ... 18 & 21

Segura v. United States
486 U.S. 796, 104 S. Ct. 3380,
82 L. Ed. 2d 599 (1984), ... 25 & 26

Terry v. Ohio
392 U.S. 1, 88 S. Ct. 1868,
20 L. Ed. 2d 889 (1968) . . . . . 11, 13 & 15

United States v. Brignoni-Ponce
422 U.S. 873, 95 S. Ct. 2574,
45 L. Ed. 2d 607 (1975) 13

United States v. Garnier
LEXIS 17334 (6th Cir. 1994), ... 19, 20 & 27

United States v. Chavez-Villarreal
3 F. 3d 124 (5th Cir. 1993), ... 20

United States v. Gonzalez
763 F.2d 1127 (10th Cir. 1985), ... 22

United States v. Hastamorir
881 F.2d 1551 (11th Cir. 1989), ... 11

United States v. Maragh
894 F. 2d 415 (D.C. Cir. 1990), ... 21

United States v. Martinez
808 F.2d 1050 (5th Cir. 1987), ... 9

United States v. McCraw
920 F. 2d 224 (4th Cir. 1990), ... 21

United States v. Mcswain
29 F.3d 558 (10th Cir. 1994), ... 20

United States v. Novak
870 F.2d 1345 (7th Cir. 1989), ... 9

United States v. Richard
994 F.2d 244 (5th Cir. 1993), ... 22

United States v. Richardson
949 F.2d 851 (6th Cir. 1991), ... 9

United States v. Ruigomez
702 F.2d 61, 65 (5th Cir. 1983), ... 22

United States v. Sandoval
29 F.3d 537 (10th Cir. 1994), ... 20

United States v. Sharpe
470 U.S. 675, 84 L. Ed. 2d 605, 105 S. Ct. 1568
(1985), ... 9 & 10

Wong Sun v. United States
371 U.S. 471, 83 S. Ct. 407,
9 L. Ed. 2d 441 (1963), ... 24 & 25

CONSTITUTION:
United States Constitution, Fourth Amendment, ... 2

United States Constitution, Fourteenth Amendment, . . . 2

STATUTES AND RULES:
28 U.S.C. §1257, ... 2

Sections 316.183, 318.14 & 318.18,
Florida Statutes (1994), ... 8

IN THE
SUPREME COURT OF THE UNITED STATES
February Term, 1995

Case No.:

ERNEST D. SUGGS,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

Petitioner, Ernest D. Suggs, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida entered September 1, 1994.

CITATION TO THE OPINION BELOW

The decision of the Supreme Court of Florida in this cause appears as Ernest D. Suggs v. State of Florida, Case No. 80,340 (Fla. 1994), and is appended hereto as Appendix A.[1]

---

[1] References to the record on appeal will appear as (R-page number). Petitioner is submitting an Appendix containing the primary documents relied upon in this petition, including the Florida Supreme Court Opinion (App.

JURISDICTION

The decision of the Supreme Court of Florida was published on September 1, 1994. Petitioner filed a timely petition for rehearing which was denied on October 25, 1994. (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause . . . .

Section One of the Fourteenth Amendment provides in pertinent part:

No state shall . . . deprive any person of life, liberty, or property, without due process of law.

A); the Florida Supreme Court Order Denying Rehearing (App. B); the Order Denying Defendant's Motion to Suppress (App. C); the transcript of the Motion to Suppress (App. D); and the affidavits for search warrants (App. E).

STATEMENT OF THE CASE

On August 6, 1990, Pauline Casey, a barmaid at the Teddy Bear Bar ("Bar") located in Walton County, Florida, was suspected to be missing when another employee, Diane Hosmeier, went to the bar at 11:10 p.m. and found it empty, with no sign of Casey. Hosmeier observed Casey's personal effects in the bar and noticed that the "open" sign was displayed in the window. Hosmeier observed no sign of a struggle. (R-2227, 2316-17). Hosmeier then called the bar owner, Ted Valencia, who instructed her to call the police. Based on Hosmeier's phone call, the police arrived at the bar around 11:30 p.m. and questioned Valencia, who had also arrived at the bar. (R-2243). Valencia told the police that Ray Hamilton, Casey's neighbor, had been at the bar that night. (R-2682-83). Therefore, the police picked Hamilton up and brought him to the bar. (R-2323). Hamilton told the police that he had seen an individual at the bar when he left that night. (R-2684-85). Hamilton did not personally know the customer; however, he described the customer in general terms. Additionally, he described a vehicle which he believed was present at the bar when he left. (R-2684-85).

Based on this general information, police issued a "BOLO" for the vehicle which Hamilton described as a big dark colored jeep. (R-1363-64). Subsequently, a patrol officer, Deputy Russell Townsend, stopped the Petitioner for speeding at approximately 4:50 a.m. on the morning of August 7, 1992. Petitioner's vehicle fit the general description of the BOLO. (R-853-855; App. D). Petitioner's vehicle was pulled over at a convenience store. After stopping, Petitioner exited his vehicle and approached Townsend's patrol car. As Petitioner approached, Townsend placed his hand on his service revolver and commanded Petitioner to get back into his car and remain there.

Townsend called for assistance. Six officers and four police vehicles arrived at the scene and the officers began questioning Petitioner. (R-856-857, 884-887; App. D).

The officers took and retained possession of Petitioner's drivers license, keys, and automobile title. Then, one officer transported him to the police substation in the back of a police cruiser while another officer drove Petitioner's vehicle there. (R-858, 875, 890; App. D.). At the substation, police interrogated Petitioner about his knowledge of Casey's whereabouts. (R-875; App. D).

The Petitioner repeatedly denied any involvement with the girl's disappearance. (R-890-91, 896, 900; App. D). Nonetheless, the officers continued to interrogate the Petitioner and repeatedly stated that "our concern was to eliminate [sic] him from this incident at the Teddy Bear Bar." (R-895; App. D).

After the police interrogation continued for an hour and twenty-five minutes, the Petitioner finally signed a consent for the search of his home. Almost an hour later, a consent to search his vehicle was signed. (R-876-877; App. D). At no time during the traffic stop or subsequent detention at the Substation did the police tell the Petitioner that he was free to leave. The police testified:

> A. He could have left, yes, sir.
> Q. Okay, did you tell him that?
> A. I did not. (R-886; App. D).
>
> * * *
>
> Q. Did you advise him that he had the right to get up and leave?
> A. I did not, no. (R-890; App. D).

While Petitioner was being interrogated, based upon

his consent to search, the officers obtained tire impressions from Petitioner's vehicle using WD-40 and cardboard. Those impressions were provided to road deputies who began looking for similar tracks leading off of main roads. (R-2988-89). Meanwhile, the officers took Petitioner to his home and began searching his home where they found wet money in the bathroom sink. (R-880-81; App. D). While the search of the Petitioner's home was ongoing, the body of Pauline Casey was found off of a road that had tire tracks similar to those of Petitioner's vehicle. (R-2995-96). Thereafter, Petitioner was formally arrested while in his home at 8:56 a.m. on the morning of August 7, 1990. (R-2718, 2997).

Subsequently, relying upon the information gained by the police during the "consent" searches as the probable cause, search warrants were issued for the search of Petitioner's vehicle and home. (R-6-10; App. E). The search of Petitioner's vehicle revealed two of the victim's fingerprints on the exterior of the passenger window and one palm print on the inside of the passenger door handle. (R-3360). The subsequent search of Petitioner's home revealed a book entitled Deal the First Deadly Blow, which the prosecution claimed contained photographs of wounds similar to those of the victim in this case. A murder weapon was never found. (R-2689).

Petitioner was indicted on charges of first degree murder, kidnapping, robbery, and possession of a firearm by a convicted felon. He entered a plea of not guilty[2] (R-11 15) and filed pretrial motions to suppress evidence based upon Petitioner's illegal detention. (R-775, 787).

The trial court denied Petitioner's motions based on the following rulings: first, that the Petitioner "consented to

---

[2] The possession of a firearm by a convicted felon was severed for trial purposes. (R-960).

accompany the law enforcement officers to the Substation;" second, that "even if an appellate court finds that this was not a consensual trip to the substation, the [Petitioner's] conduct at the substation created a valid waiver;" and third, that "based on the totality of the circumstances" the Petitioner's "consent was voluntary." (R-837-38; App. C). The trial court's third ruling rejected Petitioner's assertion that he was "without sleep [and] intoxicated," thereby not being able to give a valid consent. Instead, the trial court found that Petitioner was able to consent because if he was as "tired or drunk as he [asserted], it is reasonable to assume that he would have stayed home and slept." (R-838; App. C).

Petitioner's case then proceeded to trial resulting in guilty verdicts on counts I, II and III of the indictment. By a seven to five vote, the jury recommended the death penalty be imposed. (R-1756). On July 15, 1992, the trial court sentenced the Petitioner to death.

Petitioner then appealed his conviction and death sentence asserting that his detention was illegal as violative of the Fourth Amendment because no probable cause existed to detain him. Moreover, Petitioner argued that the consents he signed during the lengthy detention were the product of his illegal arrest. Without discussing any of this Court's controlling precedent, the Florida Supreme Court held that:

> At the time Suggs was stopped, no one even knew the victim was dead; the officers were looking for Suggs simply to determine if he knew the victim's whereabouts. Additionally, Suggs was legitimately stopped because he was speeding. Further, Suggs voluntarily agreed to accompany the officer to the station, even going so far as to show another officer how to drive his vehicle. Finally, once at the station, Suggs not

only voluntarily agreed to allow the officers to search his home--he did so only after reaching an agreement with the officers not to charge him with the illegal possession of weapons he kept at his home.

(Florida Supreme Court Opinion, p.8; App. A).

This Petition for a Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

(I)

THERE WAS AN ILLEGAL ARREST BASED ON THIS COURT'S PRECEDENT OF DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983), WHEN THE PETITIONER WAS TRANSPORTED TO A POLICE SUBSTATION WITHOUT PROBABLE CAUSE AFTER BEING STOPPED AND QUESTIONED BY POLICE OFFICERS.

The Florida Supreme Court overlooked and failed to apply this Court's precedent of Dunaway v. New York, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), and Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). When these precedents are applied, it is clear that Petitioner was illegally arrested without probable cause and that the resulting searches were a product of the illegal police conduct.

It is undisputed that at the time Petitioner was taken into custody, the police did not even know that a crime had been committed. (Florida Supreme Court Opinion, p.8; App. A). Thus, on appeal to the Florida Supreme Court, the state tried to justify Petitioner's stop based upon a claim that he was speeding; however, speeding is a traffic infraction under Florida law that does not subject a person to arrest. *See* Florida Statutes Sections 316.183, 318.14 & 318.18 (1994). It is also possible, as the Florida Supreme Court noted, that the police may have been looking for Petitioner based on the BOLO "simply to determine if he knew the victim's whereabouts." (Florida Supreme Court opinion at p.8; App. A). However, after police determined that the Petitioner had

valid identification, clear title to his automobile, and had answered their questions, he should have been allowed to leave absent probable cause that a crime had occurred and that Petitioner committed such crime.

This Court has declined to establish a bright line rule to determine when a valid police stop becomes an arrest. Instead, this Court has left this question open for courts to decide on a case-by-case basis. *See* United States v. Sharpe, 470 U.S. 675, 84 L. Ed 2d 605, 105 S. Ct. 1568 (1985) (holding that "[m]uch as a 'bright line' rule would be desirable, in evaluating whether an investigatory detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria" in the analysis). Lower federal courts have applied this test and found custodial arrest in many cases where the facts are less compelling than those in the instant case. *See* United States v. Martinez, 808 F.2d 1050, 1055 (5th Cir. 1987) (holding that a custodial arrest occurred when police transported suspects to the police station after an investigative automobile stop); United States v. Richardson, 949 F.2d 1416, 1420 (6th Cir. 1991) (holding that a custodial arrest occurred when the police placed the suspect into a police cruiser after he refused to consent to a search of his locker); and United States v. Novak, 870 F.2d 1345, 1350-53 (7th Cir. 1989) (holding that a custodial arrest occurred when six to nine officers moved the detainee from a public place into a closed room with windows and did not tell him he was free to leave).

Moreover, this Court has held that the involuntary removal of a suspect to a police station and his detention there for "investigative purposes, whether for interrogation or fingerprinting, absent probable cause or judicial authorization" cannot be sustained against Fourth Amendment Challenge. Hayes v. Florida, 470 U.S. 811, 84 L.

Ed. 2d 705, 105 S. Ct. 1643 (1985).

Hayes was suspected of burglary and robbery and the police went to his home to ask him questions. The police told Hayes that if he did not cooperate with the taking of fingerprints at the police station, he would be arrested. Hayes then "consented" to accompany police to the station for fingerprinting. When Hayes' prints matched those found at the victim's home, Hayes was arrested. The state appellate court declined to suppress the evidence as the fruit of an illegal detention.

This Court granted certiorari and reversed based upon Davis v. Mississippi, 394 U.S. 721, 22 L. Ed. 2d 676, 89 S. Ct. 1394 (1969) (holding that fingerprints obtained from Davis without probable cause after he was detained were the fruits of an illegal search). Davis and subsequent cases uphold the doctrine that "transportation to and investigative detention at the station house without probable cause or judicial authorization together violate the Fourth Amendment." Hayes, 470 U.S. at 815, 84 L. Ed. 2d at 709, 105 S. Ct. at 1647. In Hayes, this Court reasoned that "at some point in the investigative process, police procedures can qualitatively and quantitatively be so intrusive with respect to a suspect's freedom of movement and privacy interests as to trigger the full protection of the Fourth and Fourteenth Amendments." Id. This Court further held that "[w]e adhere to the view that such seizures . . . are sufficiently like arrests to invoke the traditional rule that arrests may constitutionally be made only on probable cause." Id.

In assessing whether police activity is qualitatively and quantitatively an arrest, this Court emphasized in Sharpe *discussed supra*, that police must pursue a means of investigation that is likely to confirm or dispel their suspicions quickly. United States v. Sharpe, 470 U.S. 675, 84 L. Ed. 2d 605, 105 S. Ct. 1568 (1985). In regards to whether

probable cause is required for an overly broad detention, this Court has held:

> [A] police confinement [seizure] which . . . goes beyond the limited restraint of a Terry investigatory stop may be constitutionally justified only by probable cause.

Florida v. Royer 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). *See also* United States v. Hastamorir, 881 F.2d 1551 (11th Cir. 1989) (holding that if the totality of the circumstances indicates that an encounter has become too intrusive to be classified as an investigative detention, the encounter is a full-scale arrest and the government must establish that the arrest is supported by probable cause). Moreover, this Court has defined seizure as follows:

> Whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person.

Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

In the instant case, once the police placed the Petitioner into the police cruiser he was effectively seized because he could not walk away. The confinement was especially compelling here because the police never returned Petitioner's keys, drivers license or automobile title and the Petitioner was never told he could leave. At no time during the road stop or the subsequent interrogation at the police station did the police have the requisite probable cause to effect such an extended police confinement.

This Court has steadfastly protected Fourth Amendment rights in cases similar to the instant case. Dunaway v. New York, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), is directly on point. In Dunaway, police officers received information from an informant that Dunaway may have been involved in the killing of a pizza parlor proprietor. Although the information did not constitute probable cause, one of the police officers ordered Dunaway brought to the station. Dunaway was taken from a neighbor's home and transported to the police station. Following Miranda warnings, the petitioner incriminated himself and was arrested.

Originally, this Court granted certiorari, vacated the judgment, and remanded the case for further consideration in light of Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2674, 45 L. Ed. 2d 416 (1975) (holding that statements made after an illegal arrest were inadmissible notwithstanding Miranda warnings because there was no intervening event between the first statement and the subsequent statement). Upon remand, the trial court suppressed Dunaway's statements; however, the state appellate court reversed, reasoning that:

> Law enforcement officials may detain an individual upon reasonable suspicion for questioning for a *reasonable and brief period of time under carefully controlled conditions* which are ample to protect the individual's Fifth and Sixth Amendment rights.

Dunaway, 442 U.S. at 206, 60 L. Ed. 2d at 831, 99 S. Ct. at 2254-55.

This Court again reversed despite the state's argument

that the seizure of Dunaway did not amount to an arrest because the police had a reasonable suspicion that he possessed intimate knowledge of a serious crime. Dunaway, 442 U.S. at 207, 60 L. Ed. at 832, 99 S. Ct. at 2255-56. This Court focused instead on the Fourth Amendment's requirement of probable cause for arrest and held that such requirement is absolute because it embodied "the best compromise that has been found for accommodating [the] often opposing interests" in "safeguard[ing] citizens from rash and unreasonable interferences with privacy" and in "seek[ing] to give fair leeway for enforcing the law in the community's protection." Id. *citing* Brinegar v. United States, 338 U.S. 160, 176, 69 S. Ct. 1302, 93 L. Ed. 2d 1879 (1949). Such reasoning alleviated the need to balance the interests and circumstances involved in particular situations. Id.

This Court has recognized the need for permitting only narrow exceptions to the Fourth Amendment and these exceptions must be based on clear and legitimate law enforcement needs. For instance, in Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), this Court allowed a brief, on the spot, stop and frisk for weapons. Similarly, investigative stops at border crossings which involve "a brief question or two" have been upheld by this Court. United States v. Brignoni-Ponce, 422 U.S. 873, 95 S. Ct. 2574, 45 L. Ed. 2d 607 (1975). However, in Terry this Court noted that even such a brief encounter constituted a "serious intrusion . . . upon the sanctity of the person, which may inflict great indignity and arouse strong resentment." Terry, 392 U.S. at 20, 20 L. Ed. 2d at 909, 88 S. Ct. at 1888-89.

With this in mind, in Dunaway, this Court reasoned that, in contrast to the brief and narrowly circumscribed intrusions involved in Terry and Brignoni-Ponce, the detention of Dunaway was "in important respects indistinguishable from a traditional arrest." Dunaway, 442

U.S. at 212, 60 L. Ed. 2d at 835, 99 S. Ct. at 2250. In reaching that conclusion, this Court focused on the following factors: first, Dunaway was taken from a neighbor's house and put into a police car; second, he was transported to the police station; third, he was placed into an interrogation room; and fourth, he was not told that he was free to leave. This Court held that, under these circumstances, permitting an exception to the warrant requirement "would *threaten to swallow the general rule* that Fourth Amendment seizures are 'reasonable' only if based on probable cause." Dunaway, 442 U.S. Ct. 213, 60 L. Ed. 2d at 836, 99 S. Ct. at 2250-51.

The instant case is more compelling than Dunaway. Consider the following: the Petitioner was stopped by a uniformed patrol officer using blue lights (R-854-55; App. D); four patrol cars and as many as six police officers surrounded Petitioner at the scene (R-887; App. D); Petitioner was never given an option other than to go with the police officers to the substation (R-R-907-08, 920; App. D); Petitioner was not allowed to drive his automobile to the police station and instead was put into a caged police car and transported to the substation (R-907, 888; App. D); the police secured and never returned Petitioner's automobile keys, drivers license and automobile title (R-858, 890; App. D); Petitioner was taken to the substation and told that he was the last to be seen with the missing girl (R-875; App. D); and he was repeatedly told that the police needed to eliminate him from their inquiries surrounding the disappearance of the girl (R-880, 895-97; App. D). All of these events occurred at a time when, unlike in Dunaway, there was no evidence that any crime had in fact been committed.

Another case directly on point is Florida v. Royer 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). Royer was detained at Miami International Airport after Dade County detectives noticed that he fit the drug-courier profile.

Royer 460 U.S. at 493, 75 L. Ed. 2d at 233, 103 S. Ct. at 1321. The officers approached Royer and asked if he had a moment to speak with them. Royer then went with the officers into a "large storage closet" approximately forty-feet away. Royer 460 U.S. at 494, 75 L. Ed. 2d at 234, 103 S. Ct. at 1322. During the detainment, Royer's plane ticket and identification were taken away from him and held by the officers. Id. Thereafter, the police officers asked whether Royer would consent to a search of his luggage and he produced a key for one suitcase and stated that he did not know the combination to the other suitcase. Id. The officers then opened the suitcases which contained marijuana. This entire incident, from detainment to arrest, took approximately fifteen minutes.

The state appellate court reversed the conviction holding that Royer had been involuntarily confined without probable cause and that the detainment had exceeded the limited restraint permitted by Terry. Royer 460 U.S. at 495, 75 L. Ed. 2d at 235, 103 S. Ct. at 1323-24. The state appellate court reasoned that respondent's confinement was tantamount to arrest because he "found himself in a small enclosed area being confronted by two police officers -- a situation which presents almost a classic definition of imprisonment." Id. *citing* Royer v. State, 389 So.2d 1007, 1018 (Fla. 3d DCA 1980). More importantly, and relevant to the present case, is that the state appellate court found that "the detective's possession of Royer's airline ticket and their retrieval and possession of his luggage made it clear . . . that Royer was not free to leave." Id. Thus, the state appellate court concluded not only that respondent had been seized when he gave consent to search his luggage, but also that the bounds of an investigative stop had been exceeded. Royer 460 U.S. at 501, 75 L. Ed. 2d at 239, 103 S. Ct. at 1324-30. Subsequently, this Court granted certiorari and affirmed,

holding that any evidence found pursuant to the search must be suppressed because the consent to search was given during an illegal detention.

In the instant case, the Petitioner's situation is analogous to the respondent in Royer. Indeed, just as Royer felt he was not free to leave because the police had secured his airline ticket and luggage, the Petitioner here felt that he was not free to leave because the police at no time returned any of his possessions which would have enabled him to drive away. Moreover, the police never told him that he could leave nor that he had a right to do so. Thus, just as in Dunaway and Royer, the Petitioner's detention was tantamount to arrest without probable cause and the evidence should have been suppressed.

The Florida Supreme Court failed to follow this Court's clear precedent and instead summarily affirmed Petitioner's conviction and sentence holding that he "voluntarily agreed to accompany the officer to the station." (Florida Supreme Court opinion at p.8; App. A). Although the Florida Supreme Court states that Petitioner "voluntarily agreed" to go with the officers, it is interesting to note that this "voluntary trip" was accomplished by placing Petitioner in the backseat cage of a marked police car after he was surrounded by an enormous police presence consisting of at least six police officers and four police cars. Indeed, if the trip to the police station was truly "voluntary," then Petitioner's car, car keys, and title should have been returned to him and he should have been permitted to drive himself to the station. One way or the other, Petitioner should clearly have been given the option to accompany the officers to the station or to proceed on his way. Here, Petitioner was never told he could drive away and never given any option other than to accompany the officers to the station. (R-886, 907, 920; App. D). Under the circumstances, it is clear that

Petitioner did not "voluntarily" go with the officers any more than Royer "voluntarily" accompanied the officers in his case. Both had no viable option other than to accompany the officers because their means of transportation were taken from them.

The Florida Supreme Court noted that "[a]t the time [Petitioner] was stopped, no one even knew the victim was dead; the officers were looking for [Petitioner] simply to determine if he knew the victim's whereabouts." Id. Indeed, it is clear from the record that Petitioner could have been questioned regarding his knowledge of Casey's whereabouts at the scene of the stop. During the stop, the Petitioner provided police with valid identification so he could be located for subsequent questioning should the police determine a need to do so. The record clearly reveals that Petitioner gave all this information prior to the police requiring him to accompany them back to the police Substation.

Compared to the fifteen minute detention in Royer and the fact that police took possession of Petitioner's articles[3] which would have allowed him to leave, the instant case presents an illegal detention in all respects indistinguishable from formal arrest. The Florida Supreme Court failed to apply or, in the alternative, failed to distinguish this Court's holdings in Dunaway and Royer.

Because all persons should be afforded the same protection from illegal arrests without probable cause, this Court should grant the writ and remand to the Florida Supreme Court for proper application of this Court's established precedent.

---

[3]The police officers never explained why Petitioner's keys, drivers license, and automobile title were not returned to him.

(II)

THE CONSENTS TO SEARCH GIVEN BY THE PETITIONER AFTER BEING TRANSPORTED TO THE POLICE SUBSTATION WERE THE PRODUCT OF PETITIONER'S ILLEGAL ARREST.

Having established that the Petitioner was illegally detained in the present case, the next issue is whether his consent to search was a product of the illegal arrest. The police obtained the consents to search only after prolonged questioning without any intervening factors which may have broken the causal connection between Petitioner's prolonged detention, and his consents. The prosecution has the burden to establish: 1) a break in the chain of illegality; and 2) that the consents were not the product of coercion, either express or implied. Florida v. Royer, 460 U.S. 491, 497, 103 S. Ct. 1319, 13127, 75 L. Ed. 2d 229, 237 (1983), *See also* Bumper v. North Carolina, 391 U.S. 543, 548-49, 88 S. Ct. 1788, 1793, 20 L. Ed. 2d 797, 782-83 (1968), and Schneckloth v. Bustamonte, 412 U.S. 218, 222, 93 S. Ct. 2036, 2051, 36 L. Ed. 2d 857 (1973).

This Court has delineated three criteria to be examined in determining whether or not the chain of illegality was broken. Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975). First, the temporal proximity of the detention and the consent must be examined. Here, the "consents" were the product of the uninterrupted detention and interrogation of Petitioner. Once the "temporal proximity" is met, the second element is whether or not any intervening factors have been shown. If no intervening factors are present, there is nothing to break the causal connection between the illegal detention and consent thereby obtained.

In the instant case, the state offered no evidence of any break in the chain of illegality. To the contrary, all of the evidence shows that Petitioner was taken into custody and detained until he signed the consents. During the detention, the police repeatedly asked for consents to search his home and automobile. Thus, the temporal proximity of the detention and the consent were contemporaneous because nothing intervened to break the causal connection between the illegal detention and the consents.

The third element enunciated in Brown is the purpose and flagrancy of the official misconduct. This element is more than satisfied. It is undisputed that the police did not have reason to arrest the Petitioner when he was stopped and taken to the police substation. The police had neither probable cause nor any reasonable articulable suspicion that the Petitioner had committed any crime. The police action was specifically directed at interrogating the Petitioner while he was illegally detained in hopes of gaining consent to search or a confession. In sum, the police activity was nothing more than a "fishing expedition."

In United States v. Garnier, LEXIS 17334 (6th Cir. 1994), the appellee was stopped for "erratic driving." The officer initiated field sobriety tests and found them to be negative; however, during the tests he noticed that a second person in the car was reaching into a bag. The officer asked to search the bag but found no contraband. The officer then asked if he could search the trunk and the appellee said "go ahead and search it . . . ." Id. The officer found crack cocaine and arrested the appellee. The district court suppressed the evidence, a ruling affirmed by the Sixth Circuit, holding that the search of the trunk "violated the Fourth Amendment because it was not reasonably related in scope to the circumstances which justified the initial interference with the [appellee's] liberty." Id. The Sixth

Circuit gave great deference to the fact that the police officer never told appellee that he could refuse to give consent to search and still be free to leave. As a result, the Sixth Circuit reasoned, the defendant had no alternative but to submit to further searches and seizures and that the official misconduct was nothing more than an attempt to engage in a fishing expedition for evidence of illegal activity. Garnier at 17334. *See also* United States v. Mcswain, 29 F.3d 558, 560 (10th Cir. 1994) (holding that a subsequent search of appellant's trunk was unjustified where the initial stop was to validate a temporary license expiration date. Such further detention "exceeded the scope of the stop's underlying justification"); and United States v. Sandoval, 29 F.3d 537 (10th Cir. 1994) (holding that appellant's consent to search of automobile was invalid because of police officer's extended detention after he had previously determined that the appellant had a drivers license and registration).

Thus, a police officer may not go on a fishing expedition after the purpose of the initial stop is met. More importantly, if the police go beyond the reason justifying the initial stop, the state must show that the consent was not a product of the illegal detention. There is simply no reason why Petitioner could not have been questioned at the scene of the stop regarding his knowledge of the whereabouts of Casey and thereafter permitted to go on his way. Instead, the officers took Petitioner into custody on an obvious "fishing expedition" in the hope of obtaining his consent to search or a confession.

Because there is no break in the chain of illegality, the consents are the product of illegal police activity and the fruits of the resulting searches must be suppressed. Suppression is required, even if the consents to search were voluntarily given during an illegal detention. *See* United States v. Chavez-Villarreal, 3 F. 3d 124 (5th Cir. 1993); United

States v. McCraw, 920 F. 2d 224 (4th Cir. 1990); United States v. Maragh, 894 F. 2d 415 (D.C. Cir. 1990).

Even if this court finds the consents to search were not a product of Petitioner's illegal arrest, the consents were involuntary as a matter of law. While it is undisputed that a search may be conducted without a warrant or probable cause if it is conducted pursuant to consent, Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S. Ct. 2041, 2043-44, 36 L. Ed. 2d 854 (1973), it is clear that any consent must be voluntary and not the product of express or implied coercion. Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983); Bumper v. North Carolina, 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797. In determining whether a consent is voluntary, a court must:

> "consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter."

Florida v. Bostick, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991). Thus, no single criterion will suffice to determine whether a consent is voluntary. Instead, this Court reviews the totality of the circumstances to determine if a reasonable person would believe that he or she was free to leave. Schneckloth v. Bustamonte, 412 U.S. 218, 227, 93 S. Ct. 2041, 2051, 36 L. Ed. 2d 862 (1973). Paramount in determining the voluntariness of a consent is the length of the detention and the nature of the questioning. Id. 412 U.S. at 226, 93 S. Ct. at 2049, 36 L. Ed. 2d 870. Additionally,

lower courts have held that where the police fail to tell a defendant that he is free to go and retain control of his registration and title, a consent to search is involuntary. *See* United States v. Gonzalez, 763 F.2d 1127, 1133 (10th Cir. 1985).

The facts in the present case clearly indicate that Petitioner's consent was not voluntary. Petitioner had been detained for a prolonged period of time, the questions were directed exclusively to the whereabouts of a missing person, the police did not tell the Petitioner that he was free to leave, and the police retained exclusive control over the Petitioner's keys, drivers license, and automobile title. The Petitioner was never advised of his Miranda rights (R-889-90; App. D) and was held at the police station until he signed the consents. The opinion of the Florida Supreme Court notes that Petitioner would not sign the consents until "after reaching an agreement with the officers not to charge him with the illegal possession of weapons he kept at his home." (Florida Supreme Court Opinion at p.8; App. A). This finding clearly reflects the coercive nature of the police activities--the officers guaranteed Petitioner immunity from criminal prosecution, if his consent was forthcoming! To add insult to injury, Petitioner was charged with possession of the firearms found in his home.

The Petitioner in the instant case consented to the searches only after his illegal detention for over two hours. If a consent to search "was preceded by a Fourth Amendment violation, the [state] bears a heavier burden of proof." United States v. Richard, 994 F.2d 244 (5th Cir. 1993), *citing* United States v. Ruigomez, 702 F.2d 61, 65 (5th Cir. 1983). The Florida Supreme Court summarily affirmed the Petitioner's conviction notwithstanding the clear Fourth Amendment violation. The state offered no proof that his consents were voluntary, other than the fact that Petitioner

signed the consents after hours of interrogation.

It is clear that there was no break in the causal chain between Petitioner's illegal arrest and the execution of the consents to search. Accordingly, the consents were a product of the illegal police activity and otherwise involuntary as a matter of law. The evidence seized by the police utilizing those consents to search must be suppressed.

(III)

THE RESULTING SEARCH WARRANTS WERE THE FRUIT OF ILLEGAL POLICE CONDUCT AND THE EVIDENCE SEIZED THEREBY SHOULD HAVE BEEN SUPPRESSED.

After Petitioner's arrest, the police obtained search warrants for both his home and automobile. The probable cause affidavits for both warrants are identical. Those affidavits refer to the consents to search obtained during the Petitioner's illegal detention and rely upon the fruits of the consent searches to establish probable cause for issuance of the search warrants. The probable cause affidavits refer specifically to the money found in Petitioner's bathroom sink as well as tire tracks found at the crime scene which "resembled" those taken from Petitioner's automobile while he was illegally detained. (R-6-10; App. E). This is clearly "fruit of the poisonous tree" concerning which this Court has held, "[t]he exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion." Wong Sun v. United States, 371 U.S. 471, 485, 83 S. Ct. 407, 9 L. Ed. 2d 441, 454 (1963). Although Wong Sun dealt with verbal evidence, this Court has held "[n]or do the policies underlying the exclusionary rule invite any logical distinction between physical and verbal evidence." Id.

It is true that not all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Id. 371 U.S. at 488, 9 L. Ed. 2d at 455, 83 S. Ct. at 424. Rather, this Court has held that the question turns on "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation

of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Id. Thus, in Wong Sun, the admissions of Wong Sun were admitted because, although his initial arrest was without probable cause, the admissions were the result of his "return[ing] voluntarily several days later" after being released "on his own recognizance after a lawful arraignment." Id. 491; 457. Applying that rationale to the present case, it is clear that the evidence obtained through execution of the search warrants should have been suppressed as fruits of the illegal arrest.

There was a clear chain of circumstances leading from Petitioner's illegal arrest to the execution of the consents to search. Based upon those consents to search, the officers took tire prints from Petitioner's vehicle and found wet money in his home. These facts were then incorporated in the subsequent search warrants to establish probable cause[4] for the search warrants to be issued. Under these circumstances, nothing occurred that would dissipate the "primary taint," i.e., the illegal arrest, and all evidence derived from the consent searches and the search warrants should be suppressed as "fruit of the poisonous tree."

Additionally, in the instant case, there was no "independent source" for the issuance of the search warrants. In Segura v. United States, 486 U.S. 796, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984), this Court upheld a subsequent search

---

[4] There is an allegation in the probable cause affidavits that "[t]here appears to be blood located on the passenger side of the green jeep." (R-8, 10; App. B). The crime laboratory conducted a test on the vehicle which was negative for blood. The officer who prepared the search warrant affidavit testified he could not remember whether he knew there was no blood on the car before preparing the search warrant. (R-898-99; App. A).

warrant obtained after an initial illegal entry. In that case, agents illegally entered the defendant's home and observed drugs in plain view. The agents then secured the premises and obtained a search warrant and the subsequent search was upheld. However, this Court made it clear that the validity of the search warrant was premised on the fact that

> "[n]one of the information on which the warrant was secured was derived from or related in any way to the initial entry into petitioner's apartment . . . No information obtained . . . was needed *or used by the agents to secure the warrant.*

Id. 468 U.S. at 814, 104 S. Ct. at 3398, 82 L. Ed. 2d 617 (*emphasis added*).

Unlike Segura, in the case at bar, the evidence that was secured illegally during Petitioner's detention is precisely the evidence the police relied upon to obtain the search warrants. As a result, all evidence obtained through the search warrants should be suppressed.

(IV)

IT IS NOT SUFFICIENT FOR POLICE OFFICERS TO REMAIN QUIET AND NOT INFORM A SUSPECT OF THE RIGHT TO LEAVE IN ORDER TO UNDERMINE THIS COURT'S PRECEDENT ENUNCIATED IN DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983).

As discussed above, in determining whether a consent to search is voluntary, consideration must be given to all circumstances surrounding the encounter, Florida v. Bostick, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991); however, of critical importance is whether or not a person knows that he or she is free to leave.

Similar to Garnier, Royer and Dunaway discussed *supra*, the police officers in the instant case never advised Petitioner that he was free to leave. (R-890). Instead, like the respondent in Royer, at all times the police had possession of his effects which made it impossible for him to leave. Although the police testified that Petitioner was free to leave, this statement defies logic given the totality of the circumstances. Without an express statement from the police, it was entirely reasonable to assume that the Petitioner did not think he was free to leave. This Court was cognizant of this dilemma in Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975), and tried to solve the problem by requiring application of a three prong inquiry. However, an issue that remains unanswered is whether or not the police should inform a person that he or she is free to leave. This Court has not directly addressed whether the police should make an affirmative statement to

a person, detained for questioning, that he or she is free to leave. To resolve this ambiguity, this Court should further clarify its holding in Brown by requiring police officers to affirmatively state that a suspect is free to go. By not mandating such a requirement, police officers may usurp this court's holding in Royer by self-serving statements that a suspect was free to leave, when such was never communicated to the detainee; indeed, that is exactly what occurred in the present case. Because the Fourth Amendment is critical to balancing the needs of the citizenry against the arbitrary acts of law enforcement, this Court should grant Petitioner's writ and clarify the law requiring law enforcement to affirmatively advise a detainee of his right to leave police custody.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

LARRY D. SIMPSON
Florida Bar No. 176070
KITCHEN, JUDKINS, SIMPSON & HIGH
P.O. Box 10368
Tallahassee FL 32302
(904) 222-6040
Counsel for Petitioner,
Ernest D. Suggs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Mark C. Menser, Assistant Attorney General, Office of Attorney General, The Capital, Tallahassee, Florida 32399-1050, this 23rd day of February, 1995.

Attorney

SUPREME COURT OF FLORIDA

NO. 80, 340

ERNEST SUGGS, Appellant,

vs.

STATE OF FLORIDA, Appellee.

[September 1, 1994]

PER CURIAM.

Ernest Suggs appeals his convictions of first - degree murder, kidnapping, and robbery and his sentences for these offenses, including a sentence of death for the first - degree murder conviction. We have jurisdiction pursuant to article V, section 3(b)(1), Florida Constitution. For the reasons expressed, we affirm Suggs' convictions and sentences.

The record reflects the following facts regarding this case. Pauline Casey, the victim, worked at the Teddy Bear

Bar in Walton County. On the evening of August 6, 1990, the bar was found abandoned, the door to the bar was ajar, cash was missing from the bar, and the victim's car, purse, and keys were found at the bar. The victim was missing. Ray Hamilton, the victim's neighbor, told police that he last saw the victim shooting pool with an unidentified customer when he left the bar earlier that night. Based on Hamilton's description of the customer and the customer's vehicle, police issued a BOLO for the customer. Subsequently, a police officer stopped a vehicle after determining that it matched the BOLO description.

The driver of the vehicle was identified as the appellant, Ernest Suggs. Although he was not then under arrest, Suggs allowed the police to search his vehicle and his home. While searching Suggs' home, the police found, in a bathroom sink, approximately $170 cash in wet bills, consisting of a few twenty-, ten-, and five-dollar bills and fifty-five one-dollar bills.

Meanwhile, police obtained an imprint of the tires on Suggs' vehicle and began looking for similar tire tracks on local dirt roads. Similar tire tracks were found on a dirt road located four to five miles from the Teddy Bear Bar. The tracks turned near a power line, and the victim's body was found about twenty to twenty-five feet from the road. The victim had been stabbed twice in the neck and once in the back; the cause of death was loss of blood caused by these stab wounds. After the victim was found, Suggs was arrested for her murder.

In addition to the cash and tire tracks, police obtained the following evidence connecting Suggs to the murder: one of the three known keys to the bar and a beer glass similar to those used at the bar were found in the bay behind Suggs' home; the victim's palm and fingerprints were found in Suggs' vehicle; and a serologist found a bloodstain on Suggs' shirt that matched the victim's blood. Additionally, after his arrest, Suggs told two cellmates that he killed the victim.

In his defense, Suggs contended that he was framed and made the following claims: that he had small bills because his parents had paid him in cash for working on their dock; that the money was wet because he fell in the water while working on the dock; that other vehicles have tires similar to the tires on his vehicle; that the tires on his vehicle leave a specific overlap pattern because of the wear on them and that no such overlap pattern was found at the scene; that the underbrush on his vehicle did not match any brush from the area of the crime scene; that no fibers or hairs from the victim were found in his vehicle; that the fingerprints in his vehicle could have been left at any time before the day of the murder; that the enzyme from the blood stain on his shirt matches not only the victim but also 90% of the population; that the shirt from which the blood was taken was not properly stored and that the stain could come from any bodily fluid; that the tests performed on the blood stain produced inconclusive results, including the fact that the stain could have been a mixed stain of saliva and hamburger; that a news conference was held regarding his arrest twenty-four hours before the bay behind his house was searched, which provided ample time for someone to deposit the key and glass there; and that his two cellmates lied, gave inconsistent testimony, and received reduced sentences because of their testimony. Additionally, Suggs contended that both Ray Hamilton and Steve Casey, the victim's husband, could have committed the murder (with Casey having life insurance as a motive), and that those individuals were being pursued as suspects until his arrest, but as soon as he was arrested, police dropped their investigation of those suspects.

The State countered this defense by showing that the dock on which Suggs was purportedly working contained no new wood; that the tire tracks did in fact match Suggs' vehicle; and that the enzyme from the blood did not come from Suggs.

Suggs was convicted of first-degree murder, kidnapping, and robbery.

At the penalty-phase proceeding, one of Suggs' cellmates testified that Suggs told him he murdered the victim because he did not want to leave a witness. Additionally, the State entered into evidence a book entitled Deal the First Deadly Blow, which they had taken from Suggs' house. The State used this evidence to show that Suggs planned how he would kill the victim. The State also introduced evidence that Suggs was convicted of first-degree murder and attempted murder in 1979 and that he was on parole at the time of the murder in this case. Suggs produced evidence showing that he came from a good family; that he was a normal, happy child; and that he was a very hard worker.

After the penalty proceeding, the jury recommended, by a seven-to-five vote, that Suggs be sentenced to death. The trial court sentenced Suggs to death, finding seven aggravating circumstances[1] and three mitigating

---

[1] **(1) A capital felony was committed by Suggs while under sentence of imprisonment; (2) Suggs was previously convicted of another capital felony and a felony involving the use or threat of violence to the person; (3) the crime for which Suggs is to be sentenced was committed while he was engaged in the commission of the crime of kidnapping; (4) the capital felony was committed for the purpose of avoiding or preventing a lawful arrest; (5) the capital felony was committed for pecuniary gain; (6) the capital felony was especially heinous, atrocious, or cruel; (7) the capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.**

circumstances.[2]

Guilt Phase

As his first issue on appeal, Suggs contends that a new trial is warranted because the trial judge erred in permitting a judge to testify on behalf of the State without first conducting a Richardson[3] hearing. This claim arises from the following facts. Wally Byars, one of the two cellmates who testified against Suggs, was serving a three-year sentence but was temporarily released from jail during that sentence. During that release, Byars was arrested after getting into a dispute with his wife. To minimize the impact Byars' arrest would have on his credibility as a witness, the State announced that it would call Acting Circuit Judge Lewis R. Lindsey to testify that he made the decision to release Byars. The State announced Judge Lindsey as a witness after the jury was sworn even though Judge Lindsey had not been listed as a potential witness on the State's witness list. After learning that Judge Lindsey would be called as a witness, Suggs objected and asked for a Richardson hearing because the failure to list Judge Lindsey as a witness constituted a discovery violation. Suggs contends that, because the trial judge failed to conduct a Richardson hearing before allowing Judge Lindsey to testify, a new trial is warranted.

The failure to conduct a Richardson hearing in the face of a discovery violation is per se reversible error once

---

[2] **(1) The capacity of Suggs to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired (he had been drinking at the time of the incident); (2) Suggs' family background (he came from a good family); and (3) Suggs' employment background (he was a hard worker).**

[3] Richardson vs. State, 246 So. 2d 771 (Fla. 1971).

the violation has been brought to the court's attention and a Richardson hearing has been requested. Smith v. State, 500 So. 2d 125 (Fla 1986). The mandates of Richardson apply to rebuttal witnesses as well as to witnesses called on direct examination. Elledge v. State, 613 So. 2d 434 (Fla 1993); Kilpatrick v. State, 376 So. 2d 386 (Fla 1979). Consequently, under the facts of this case, we must determine whether a discovery violation occurred, whether a Richardson hearing was requested, and, if so, whether the trial judge made an inquiry sufficient to satisfy the dictates of Richardson.

The record reflects that, upon the State's announcement that it might call Judge Lindsey as a rebuttal witness, Suggs' counsel objected and asked for a Richardson hearing. At that point, the trial judge acknowledged that, if the State were to call Judge Lindsey as a witness, "clearly [Suggs] would be entitled to a Richardson hearing." Six days later, the State announced that it would be calling Judge Lindsey as a witness. Suggs' counsel again objected, arguing that the judge's testimony was not probative and was highly prejudicial. At that time, however, Suggs' counsel stated that the admission of Judge Lindsey's irrelevant testimony could not be cured by a Richardson hearing. The trial judge then proceeded to hear a significant amount of argument by both the State and Suggs regarding the relevancy of Judge Lindsey's testimony. After reviewing the position of both sides, the trial judge stated:

[G]iven the disparity between the State and the defense as it relates to the circumstances surrounding that medical release, when it occurred, why it occurred, how it occurred, what the conditions of that release were, and the significance that that issue obviously raises for both the State and the defense, I know of no other way to deal with it other than to allow Judge Lindsey to testify on that point.

If counsel can in the meantime come up with some creative way of resolving the problem I am open to hearing

it. But at this point there has not been one that I have been able to suggest or either counsel suggest short of going straight to the horse's mouth to find out exactly what happened when and the conditions, etcetera.

Thereafter, Suggs never renewed his request for a Richardson hearing.

We find the State committed a discovery violation when it stated its intention to call Judge Lindsey to testify because Judge Lindsey was not listed as a witness before trial. Brazell v. State, 570 So. 2d 919 (Fla. 1990). Additionally, we find that Suggs objected to the admission of Judge Lindsey's testimony and simultaneously requested a Richardson hearing. Thus, the first two prongs of our inquiry were met, i.e., a discovery violation occurred and a Richardson hearing was requested. We find, however, that we need not reach the third issue of whether an adequate Richardson hearing was conducted by the trial judge, because, under the circumstances of this case, we find that Suggs' counsel waived his request for such a hearing by stating that a Richardson hearing would not cure the damage of admitting Judge Lindsey's testimony. Clearly, the trial judge was aware that Suggs was entitled to a Richardson hearing. After Suggs' counsel made the statement that a Richardson hearing could not cure the discovery error, the trial judge heard arguments as to the relevancy of Judge Lindsey's testimony but she did not hear arguments as to the prejudicial nature of the discovery error. See Smith (Richardson inquiry consists of a determination as to whether the discovery violation prevented a party from properly preparing for trial). Moreover, Suggs' counsel had ample opportunity to renew his request for a Richardson hearing but failed to do so. On these facts, we determine that Suggs waived his Richardson hearing request, and we deny this claim.

Suggs next contends that the trial judge erred by denying Suggs' motion to suppress the evidence found at his

home, claiming that his initial detention by police was illegal and that the consent form he signed agreed to allow the law enforcement officers to search his home was improperly obtained. We disagree. At the time Suggs was stopped, no one even knew the victim was dead; the officers were looking for Suggs simply to determine if he knew the victim's whereabouts. Additionally, Suggs was legitimately stopped by the officer because he was speeding. Further, Suggs voluntarily agreed to accompany the officer to the station, even going so far as to show another officer how to drive his vehicle. Finally, once at the station, Suggs not only voluntarily agreed to allow officers to search his home--he did so only after reaching an agreement with the officers not to charge him with the illegal possession of weapons that he kept at his home.

In his third claim, Suggs argues that the trial judge erroneously denied his motion for mistrial. During opening arguments, the prosecutor stated that Taylor, a cellmate of Suggs', would tell the jury that "[Taylor is] from Alabama. He's been in prison up there. He and the Defendant -- he knew the Defendant." At the close of the prosecutor's argument, Suggs moved for a mistrial based on the fact that the jury could infer from this statement that Suggs had been in prison with Taylor. Before ruling, The trial judge reviewed the transcript and listened to the statement on the court reporter's tape, after which the trial judge found no misrepresentation by the State. Later, however, the trial judge determined that it was a "close call" as to whether a reasonable person might infer that Suggs had been in prison with Taylor. Consequently, Suggs and the prosecutor reached an agreement as to the following statement that the prosecutor subsequently read to the jury:

In order to avoid any possible misunderstanding that may have been created yesterday, I would like to make a brief statement: I did not intend to imply that Mr. Taylor met Mr. Suggs in prison in Alabama. The evidence will show the first

time they met was in the Walton County Jail after Mr. Suggs' arrest in this case.

Based on this curative statement and the fact that Taylor and Suggs never served together in prison, we find that the prosecutor's curative statement was sufficient to remove any impression created in the minds of the jurors that Suggs may have served time in prison with Taylor in Alabama.

Suggs also points to a number of arguments and tactics of the prosecutor which he asserts deprived him of a fair trial. We note that other than the comment at issue in the preceding claim, none of the prosecutor's arguments or tactics were objected to at trial. Consequently, this claim has not been preserved for appeal. Moreover, having reviewed the prosecutor's conduct within the context of the entire record, we find this claim to be without merit.

In his fifth claim, Suggs asserts that the evidence was insufficient to support Suggs' conviction for kidnapping because no evidence exists to support the charge that he forcibly required the victim to leave the bar. We disagree. As stated by the trial judge:

The evidence showed that the victim, a reliable worker and sole employee at the time, was discovered missing from the bar; the bar had been left open with lights on; the victim's purse and keys were beside the unsecured cash register and her car was in the parking lot. Money had been taken from the cash register. [The victim's] body, with multiple stab wounds, was later found in high brush in a wooded area.

Further, Byars testified at trial that Suggs told him he took the victim out of the bar at knife point. Based on this evidence, we find that the record supports Suggs' conviction for kidnapping.

In his final guilt-phase argument, suggs contends that the trial judge erred in denying Suggs' motion to preclude the in-court identification of Suggs by Ray Hamilton. Again,

we disagree. After Suggs was taken to the police station, the police brought Ray Hamilton to the station after they picked him up from his home in the middle of the night. At the station, police showed him a single Polaroid photograph of Suggs "while it was developing" and asked him whether the person in the photograph was the person who was with the victim when Hamilton left the bar. Hamilton positively identified the photograph. Suggs moved to suppress this identification given the suggestive nature of the identification. In ruling on Suggs' motion, the trial judge noted that this procedure was indeed suggestive. In denying the motion, however, she determined that Hamilton's identification was still reliable given that Hamilton spent thirty-five minutes in the presence of Suggs at the bar; that Hamilton gave a detailed and accurate description of Suggs before being shown the photograph; that he had the opportunity to closely examine Suggs at the bar; that he was shown the photograph less than twelve hours after he saw Suggs; and that he was not told that this was the suspect. We find that the trial judge correctly denied Suggs' motion.

Penalty Phase

As to his sentence of death, Suggs first claims that the trial judge erred in admitting into evidence the book entitled Deal the First Deadly Blow. According to Suggs, the book was irrelevant and inflammatory and was entered into evidence at the penalty proceeding even though no evidence was produced to connect Suggs with the book. Further, the prosecutor emphasized that the type of wounds on an individual pictured in the book matched the wounds on the victim in this case. The trial judge also relied on this evidence to show that the murder was cold, calculated, and premeditated. Suggs argues that he is entitled to a new sentencing proceeding because this evidence was erroneously considered by the judge and jury.

The record reflects that the trial judge found the book to be relevant because the illustration in the book reflected

wounds to a victim that were very similar to the stab wounds inflicted on the victim's body in this case. Nevertheless, the judge stated that she would not allow the book into evidence without a proper foundation showing that the book belonged to Suggs. Consequently, the State put on the testimony of two officers to show that the book likely belonged to Suggs because it was found in the house where he lived and was found near a notebook which had Suggs' name in it and which contained diagrams of knives and notes on how to commit a robbery. The trial judge determined that the book was admissible. To help minimize the impact of the book, however, the trial judge asked defense counsel if he would prefer that only the cover page of the book and the single picture at issue be shown to the jury. Defense counsel declined this offer, opting instead for the introduction of the entire book. Under these circumstances, we find that the book was properly admitted during the sentencing proceeding.

Finally, Suggs argues that the trial judge erred in a number of areas by allowing the jury to consider certain evidence in aggravation and in instructing the jury on certain aggravating factors. Specifically, Suggs contends that: (1) the prosecutor improperly elicited testimony during the penalty phase regarding witness elimination and nonviolent, uncharged offenses that Suggs had either committed or planned to commit; (2) insufficient evidence existed to establish that Suggs set out to kill the victim to eliminate a witness; (3) the jury instruction on heinous, atrocious, or cruel is invalid under Espinosa v. Florida, 112 S. Ct. 2926, 120 L. Ed. 2d 854 (1992); (4) the murder was not heinous, atrocious, or cruel because the victim had only two knife wounds of any significance and because it is uncertain whether the victim was in any pain or how long she lived after the attack; (5) the murder was not cold, calculated, and premeditated; and (6) the trial court improperly doubled aggravators by finding that Suggs committed the murder "to

avoid detection" and "to avoid arrest." We find all of these claims to be without merit and note that only a few deserve further discussion. No objection was made by Suggs to the solicitation of testimony during the penalty phase, and the arguments regarding that testimony are procedurally barred. Likewise, the Espinosa claim was not preserved for review. Notably, the instruction given is not the invalid instruction at issue in Espinosa. Additionally, no objection was made to the giving of the instruction on the cold, calculated, and premeditated aggravating circumstance. Finally, we find that the trial judge properly found that the murder was both heinous, atrocious, or cruel and cold, calculated, and premeditated. As the trial judge noted:

Following the robbery, [the victim] was taken from the bar to a secluded area. The Defendant then repeatedly stabbed the victim. She lived several minutes, not because of the Defendant's lack of dispatch and expertise, but because the tenacity for life of the human body. The victim was clearly subjected to agony over the prospect that her death was soon to occur. [The victim] bled to death after the Defendant stabbed her several times in the neck and chest; either one of two of the wounds inflicted would alone have caused her death. There was one wound at the base and rear of the neck that severed her spinal column and another stab cut a main artery. As is evident from the autopsy pictures, the Court agrees with the Defendant's statement to his cellmates that he nearly cut (the victim's) head off. In addition to the fatal wounds, the Defendant stabbed the victim several other times including one cut across the front of her neck. None of the wounds caused instant death and (the victim) would have felt the pain of the other stabs as she bled to death, surely terrified as her death approached. The Defendant acted with utter indifference to the suffering of this victim. The murder was accompanied by such additional acts which sets this crime apart from normal capital felonies. It was a

conscienceless, pitiless crime which was unnecessarily torturous to the victim. This aggravating fact, that the capital felony was especially heinous, atrocious, or cruel has been proved beyond a reasonable doubt.

. . . .

The Defendant was the only customer in this rural bar at the time he robbed and kidnapped (the victim). He drove the victim to a two-rut dirt road in a wooded area of Walton County. There he stabbed her several times in the neck and back. At least two of these wounds were from the rear and are remarkably similar to wounds graphically demonstrated by photographs on page 99 in the book Deal the First Deadly Blow, recovered from the Defendant's home. These type of wounds were particularly expedient, giving their goal of death, and reflect the calculating mind of the Defendant. The entire criminal episode reflects the Defendant's careful plan to rob (the victim), kidnap her, kill her, and hide her body, all with the aim of avoiding detection. Mr. Suggs was particularly careful because, as he explained to his cellmates, he was not going to be stupid this time.

Accordingly, we affirm Suggs' convictions of first-degree murder, kidnapping, and robbery and his respective sentences, including his sentence of death for the first-degree murder conviction.

It is so ordered.

GRIMES, C.J., and OVERTON, SHAW, KOGAN and HARDING, J.J., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

SUPREME COURT OF FLORIDA

TUESDAY, OCTOBER 25, 1994

ERNEST SUGGS,

Appellant,

v. CASE NO. 80,340

STATE OF FLORIDA, Circuit Court No. 90-338 CF (Walton)

Appellee.

_____/

Appellant's Motion for Rehearing filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, SHAW, KOGAN and HARDING, JJ., concur

cc: Hon. Catherine King, Clerk

Hon. Laura Melvin, Judge

Mr. Larry D. Simpson

Mr. Mark Menser

Sid J. White
Clerk, Supreme Court

IN THE CIRCUIT COURT IN AND FOR
WALTON COUNTY, FLORIDA
FIRST JUDICIAL CIRCUIT

CASE NO. 90-0338-CF

STATE OF FLORIDA,

Plaintiff,

vs.

ERNEST SUGGS,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

THIS CAUSE was before the Court upon the Motion for the Defendant to Suppress statements and physical evidence seized (1) after his initial roadside detention, (2) following his written consent to search his vehicle and house, said consents being executed at the Walton County Sheriff's Substation, (3) as well as those items seized pursuant to a search warrant. The Court having considered the testimony presented, the argument of Counsel and being otherwise fully advised in the premises, therefore finds as follows:

1. The initial stop of the defendant's vehicle was a valid traffic stop for speeding and/or a valid investigatory stop.

2. The defendant was not formally placed under arrest at the stop site. Although law enforcement officers were suspicious, they has[sic] not concluded that a crime had occurred.

3. The Defendant consented to accompany the law enforcement officers to the Substation.

4. Even if an Appellate Court finds that this was not a consensual trip to the Substation, the Defendant's conduct at the Substation created a valid waiver.

5. At the substation, the Defendant signed a written consent to search both his vehicle and his house. In view of the totality of the circumstances, the Court concludes that the State has shown by clear and convincing evidence that the consent was voluntary. In making this determination of voluntariness, the Court has considered the following factors, among others:

a. Defendant asserts that he had been without sleep, was intoxicated, and therefore not able to effect a valid consent.

b. However, from the defendant's testimony at the motion hearing, the Court concludes that rather than sleeping, the defendant was outside working on his dock and truck during the pre-dawn hours before he was stopped. Had the defendant been as tired or drunk as he now asserts, it is reasonable to assume he would have stayed home and slept.

It is therefore

ORDERED that the Defendant's Motion to Suppress statements and physical evidence seized from him is hereby **DENIED**.

DONE AND ORDERED in DeFuniak Springs, Walton County, Florida, this 15th day of May, 1991.

LAURA MELVIN
CIRCUIT JUDGE

Conformed copies to:

Clayton Adkinson, Assistant State Attorney

Earl Loveless, Assistant Public Defender

By: _____
Deputy Clerk

Date: _____

MR. ADKINSON: Judge, this is my witnesses that I think are appropriate to this hearing.

THE COURT: Okay. Mr. Suggs, I have a motion to amend, summation and supporting case law that you had filed on April the 15th, 1991. Sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay, what is your preference? What is it that you want me to do? Do you want to proceed with this motion to amend with your -- in light of the fact that you do have court-appointed counsel? Or what is it that you're asking of me, if anything, this morning?

MR. SUGGS: The court-appointed counsel I have been appointed said that it would be better if I withdrew, his suggestion, since his motion will take care of it.

THE COURT: All right, sir. And is that what you want to do this morning?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. What I will do is make a note across these pleadings that it was withdrawn. Now, in your motion, or in the cover letter, you asked for a copy of it, because you said in here you didn't have access to a copy machine.

THE DEFENDANT: (Indicating in the affirmative)

THE COURT: Do you still want a copy of that?

THE DEFENDANT: It would probably be better, yes, ma'am. I would appreciate it, yes, ma'am. Thank you.

THE COURT: One will be sent down to you later. Are we ready to proceed?

MR. ADKINSON: You want to swear them?

THE COURT: Would each of you raise your right hands and be sworn.

(Witnesses sworn in)

THE COURT: Okay.

MR. LOVELESS: Your Honor, I would request that the rule be invoked, that the witnesses be placed under the rule, which states they're not to speak about the case except in the presence of the attorneys.

THE COURT: All right, sir. Upon request of defense counsel, the rule will be invoked and you're each specifically directed not to discuss the case among yourselves or with anyone else, except that you may talk one at a time to counsel either for the State or the defense. And who --

MR. ADKINSON: I'll call Russ Townsend. I guess the State proceeds.

MR. LOVELESS: Your Honor, our position is that, on the motion to suppress, that the search, the detention, arrest, if there was one, were all without warrants; therefore, the burden is on the State to proceed in a particular matter as this.

MR. ADKINSON: I'll proceed. I mean, we have a search warrant, I think, that's in. Y'all go ahead. I'll go forward. You and Steve wait outside and I'll talk with Russ.

RUSSELL TOWNSEND, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ADKINSON:

Q. Would you state your name, please.

A. Russell Townsend.

Q. And what is your occupation?

A. I work with the Florida Department of Corrections at this time.

Q. And, Russ, have you previously been employed with the Walton County Sheriff's Department?

A. Yes, I have.

Q. And were you employed with the Walton County Sheriff's Department on August 7th, 1990?

A. Yes, I was.

Q. And what was your duty -- were your duties at that time?

A. Deputy sheriff.

Q. Okay. And were you on duty on August 7th, 1990?

A. Yes, sir.

Q. Do you know an individual by the name of Ernest Donald Suggs?

A. Yes, sir.

Q. Did you have an occasion to come in contact with him on that day?

A. Yes, sir.

Q. And where did you first make contact with Mr. Suggs at?

A. I first made contact with Mr. Suggs at 331, on 331 at Freeport.

Q. Okay. And, if you would, tell the Court how it is that you came in contact with Mr. Suggs.

A. I had been across the bay helping my shift sergeant, Eddie Ferris, look for a vehicle that had been reported that, you know, we needed to find.

Q. What kind -- Would you tell the Court the description of the vehicle that you were looking for.

A. It was a green jeep station wagon, old model.

Q. And why were you looking for that particular vehicle?

A. Pertaining to an incident that had happened down at the Teddy Bear Lounge.

Q. What incident?

A. A lady was missing, had been abducted, abducted or something. At that time I was looking for the vehicle and found it. That's all I knew, that we were looking for the lady and --

Q. Were you looking for a vehicle that had been seen at the lounge?

A. That had been seen at the lounge.

Q. Okay.

A. Previously seen at the lounge.

Q. And you were given a description of a vehicle.

A. Yes, sir.

Q. If you would again, tell the Court what the description of the vehicle was.

A. An old model, light green Jeep station wagon.

Q. Okay. And did you observe such a vehicle on Highway 331 on August 7th?

A. Yes, sir.

Q. And what time of day was this?

A. Approximately, when I first observed the

vehicle, approximately ten minutes till five in the morning.

Q. Okay. and what did you do when you observed the vehicle?

A. Well, I noticed the vehicle was pulling away from my patrol car as I was heading north and I took it as a speeding vehicle and I started trying to gain on it to see what it was. And as I caught up with it, or kept gaining on it, the vehicle made a left turn at the Fina service station there at Bay Grove.

Q. Let me stop you. You were traveling north --

A. Yes, sir.

Q. -- on U.S. 331.

A. Right.

Q. Okay.

A. And the vehicle was also traveling north.

Q. All right.

A. As I observed the vehicle turning in to the Fina service station, I thought in my mind it was probably the guy that owned the station fixing to open up the business. But it didn't stop, it made a complete U-turn and started back towards my patrol car. At that time I observed two headlights real close together, which made me believe it could be a jeep that was coming at me. So I slowed my patrol car down to see this vehicle as it approached me. As it went by, I noticed it was an old model Jeep station

wagon. With the lights in the park and my headlights, I could tell the color of it was green. We had been told the vehicle had an Alabama tag on it. When I turned around on the vehicle and headed south behind it, I noticed it did have Alabama tags. I called my shift sergeant, Eddie Ferris, and told him that I had a vehicle southbound on 331 that I believed could be the vehicle we were looking for. He advised me to stay with the vehicle, not to stop it, until somebody could get with me. I proceeded to follow the vehicle back across the bridge southbound. And after the vehicle went across the bridge and got almost to the 331 Food Mart, it turned its blinker light on and turned left. And I called my shift sergeant, Eddie Ferris, and told him the vehicle was turning off and I would go ahead and stop it and for him to come on up there.

Q. And how far was Mr. Ferris from you at the time?

A. Approximately two miles.

Q. Okay.

A. According to -- you know, he had left the substation, coming that way, and it was probably five miles from the substation to where I had the vehicle stopped.

Q. And what did you do at that point when he turned left?

A. I activated my blue lights, flashed my

headlights so the driver could see that I was behind him. When the vehicle turned off to the left and seen my patrol car, he turned back to the right and parked at the end of the driveway there at the 331 Mart.

Q. Okay. And what did you do then?

A. I pulled up behind the vehicle, opened the door, stepped out and walked up to the driver of the jeep. And Mr. Suggs had turned sideways in the seat, put his feet on the floor, he looked at me and asked me what I had stopped him for. I said, "We're looking for a vehicle that fits this description, I have some more officers coming over and I would like for you, if you would, just to wait until they can get here."

Q. Okay.

A. He said, "Sure." I said, "Can I see your driver's license and registration, please." He got his driver's license but he said he didn't have the registration. He handed me his driver's license. I said, "Do you have a title or anything?" He said, "Yeah, but I would have to find it." I said, "Just sit where you are and I'll be back with you in a few minutes. See if you can find the title to your vehicle."

I walked back to my patrol car, sat down, picked up the mike and was going to call in his driver's license. At that time, when I had my eyes on the driver's license, I

noticed out of the corner of my eye a movement. When I looked up, Mr. Suggs was coming to my vehicle and he walked up to the door. I dropped the radio mike, stepped out and told him to stop where he was. And he put both hands out and he said, "Officer, I've got to tell you something." And I said, "What is it you want to tell me?" He said, "I'm on probation." I said, "For what?" He said, "Murder."

At that time I put my hand on my revolver and I said, "Mr. -- I had his driver's license. I said, "Mr. Suggs, step back to your vehicle and sit down in your vehicle." He turned back to the vehicle, posed no problem, sat down. I said, "Put both hands on the steering wheel and just stay there." And he did this.

At that time Eddie Ferris, my shift sergeant, drove up. Eddie said, "What you got?" I said, "Well, I've got the vehicle. This is Mr. Suggs. He told me he was on probation for murder."

So Eddie got out and walked over to him. At that time I told Eddie, I said, "I need to get the title to his vehicle." And Mr. Suggs had retrieved that at that time and he gave it to me, he had the title. And Eddie was standing there. And I walked around the vehicle and looked in the windows and all.

And at that time Sergeant Fred Mann and Steve Sunday -- Lieutenant Fred Mann, I'm sorry, Steve Sunday and

Rick Sutton came up in Lieutenant Mann's vehicle.

Q. Okay. Did you turn it over to them at that time?

A. Lieutenant Mann got out and he said, "What you got, Russ?" I said, "Well, I think we've got the vehicle." And I said, "I have this man's driver's license and title to the vehicle." He said, "Did you call it in?" I said, "No, I didn't have time. I started to but I didn't have time." He said, "That's all right, I'll take care of it," and I handed it over to him.

Q. Okay. Officer Townsend, how long would you say you were at the scene, or at the place where you had pulled him over?

A. No longer than ten minutes.

MR. ADKINSON: Okay. I don't have any other questions of Mr. Townsend.

THE COURT: Okay.

CROSS EXAMINATION BY MR. LOVELESS:

Q. Officer Townsend, was your involvement and your knowledge of this particular case limited to what you were told on the radio?

A. My knowledge in this particular case was limited on what I had learned at the scene and the description of the vehicle and the person. I did not have a

description of Mr. Suggs because I couldn't see him inside the vehicle at night.

Q. Mr. question is, you, you had knowledge other than what you had on the radio; is that right? You had visited the scene, the Teddy Bear Lounge.

A. Yes, sir.

Q. Okay. And you had been there and you had known that they were looking -- or they were investigating the disappearance, possible abduction, possible robbery of the Teddy Bear Lounge. Is that right?

A. Yes, sir.

Q. Okay. And when you were -- Isn't it, in fact, true that you were looking for a suspect in that disappearance?

A. We had gotten a description of a, of a subject, but I couldn't say that this was the subject we had a description on because I couldn't see him inside the car. I did my traffic stop on the basis of the vehicle only.

Q. Didn't you describe that as the suspect vehicle?

A. No, sir.

Q. Okay.

A. I described it as a green, light green Jeep vehicle that we were looking for. I didn't say anything about it being a suspect vehicle. I just said, you know, I

believe we have the vehicle that we've been looking for."

Q. Okay. It was your understanding that the person driving that vehicle was a suspect in the disappearance of the lady at the Teddy Bear Lounge. Is that correct?

A. In my mind, at that time, I didn't know if it was a man or woman driving. I couldn't see the driver at night. All I could see was the back of his head after I had turned around and --

Q. Officer Townsend, you were at the scene. You knew that a person, a man, had been seen with the lady at the bar. Is that right?

A. I knew, I knew that there had been a man in the bar with the lady, right.

Q. And you knew that there was a vehicle associated with that man and that was the vehicle that you have, the description that you have given us here today. Is that right?

A. Yes, sir.

MR. ADKINSON: You need to speak up so she can get your answer, Russ, please.

THE WITNESS: Yes, sir.

Q. (MR. LOVELESS) All right. So you expected a man to be driving that vehicle, did you not?

A. I would say yes to that.

Q. All right. Now, when you stopped him, you didn't tell him what it was about, did you?

A. No, sir.

Q. Just a vehicle that you were looking for.

A. Yes.

Q. Okay. And then when he, when he approached you and made that statement that you have described to us, did that alarm you?

A. It alarmed me to the fact that him and I were out there in the dark alone and the man told me he was on probation for murder, and I was protecting myself by putting him back in the vehicle.

Q. Okay. Did you, in fact, draw the gun?

A. No, sir.

Q. You didn't draw the gun --

A. No, sir.

Q. -- and point it at him?

A. No, sir. I had my hand on it.

Q. You put your hand on it. You made sure that he was aware that he saw your hand on the gun; is that right?

A. Yes, sir. I had my hand on the back of it.

Q. And you made sure that he was aware that he was to follow your instructions. Is that also correct?

A. I asked him to get back in the vehicle. I

did not tell him. I said, "Get back in your vehicle, please." I didn't --

Q. The purpose of putting your hand on the gun was to be sure he got the point, though; is that correct?

A. The purpose of putting my hand on my gun was to protect me if anything happened.

Q. Okay. You told him to get in the car. At that point in time, he was not free to leave, was he?

A. Yes, sir.

Q. Oh, he could have got up and left?

A. Yes, sir. I hadn't put him under arrest.

Q. So if he had got up and left, you wouldn't have done anything.

A. No, sir.

Q. Not a thing.

A. No, sir. The only thing I had between me and him was the fact that he told me he was on probation for murder and I was ready to protect myself. That's all. I didn't have the man under arrest.

Q. And you also had him as a suspect in the disappearance of a lady at the Teddy Bear Lounge.

A. I did not tell anybody he was a suspect.

Q. But you knew he was, didn't you?

A. No, sir. No, sir. Now, we had been searching for that vehicle for awhile. Anybody could have

parked it and somebody else could have drove it off. All I knew was that I was looking for a green vehicle I had found.

MR. LOVELESS: Thank you. That's all I have, Your Honor.

THE COURT: I have just one question.

EXAMINATION BY THE COURT:

Q. You mentioned that the Jeep was pulling away from you when you initially saw the vehicle?

A. Yes, ma'am.

Q. What was the speed limit and was that vehicle exceeding the speed limit?

A. Yes, ma'am. The speed limit was fifty-five prior to going on by the 331 Mart, but it dropped down to thirty-five in the construction going on at the bridge. And my patrol car, I was doing sixty, and I still wasn't gaining on the vehicle even across the bridge. I speeded up to sixty-five and the vehicle was still pulling away from me. And that's the reason I was in pursuit, more or less, of the vehicle, to see why he was speeding. I didn't know who it was at that time. I was trying to get up there to it so I could see who it was and stop it from speeding.

REDIRECT EXAMINATION BY MR. ADKINSON:

Q. Russ, to get the scene straight, the bridge

was under construction at the time, right?

A. (Indicating in the affirmative)

Q. And there was some temporary bridges that you had to go across.

A. Yes, sir.

Q. And it's your testimony that that vehicle was speeding through that area.

A. Yes, sir.

Q. And when you come across the bridge, is there a filling station on the left-hand side, say within a quarter of a mile after you come off the bridge, somewhere in that area?

A. After you come off the main bridge, it's about a mile.

Q. About a mile?

A. Yes, sir.

Q. Okay. And is that where he turned around?

A. Yes, sir.

Q. When he turned in there, what was it you saw at that time?

A. When I saw the vehicle turn in, I thought it was the gentleman that run the service station that was going to work to open it.

Q. Okay. But it did not stop there; is that correct?

A. And then when I seen him make a complete U-turn and head back south, I knew it wasn't stopping, so I slowed down. And when the vehicle turned around and the headlights came back towards me, I noticed they were real close together like the headlights of a jeep, and we had been looking for a jeep vehicle.

Q. Did you notice at that time -- Okay. Is that when you realized or, in your opinion, felt that that was the vehicle that you had a description for that you were looking for?

A. I was hoping. And when I saw those jeep headlights -- There was plenty of jeeps on the road. But then I slowed down and kept my vehicle at a slow speed so that when it went by I could see if I could identify it.

Q. Okay.

A. And when it went by, it was an older model jeep station wagon and it was light green in color.

MR. ADKINSON: Thank you. I don't have anything else, Your Honor.

RECROSS EXAMINATION BY MR. LOVELESS:

Q. Officer Ferris, in regard to the question about the weapon, I asked you whether or not you drew your weapon and you said no.

A. No, sir.

Q. Is that correct?

A. Yes, sir.

Q. Do you recall ever being asked that question before? Or do you recall ever testifying about that incident before?

A. I went to a deposition.

Q. Okay. Do you recall ever stating at any time that you withdrew your weapon?

A. I don't recall it, no, sir.

Q. Okay. If I would show you a copy of the deposition, would that refresh your memory?

A. Yes, sir.

MR. LOVELESS: I'm showing him, Your Honor, a copy of a deposition dated January 8th, 1991, taken in the Walton County Sheriff's Office Conference Room at ten-thirty a.m., page 7, lines 3 through, well, 3 and following there please, sir.

(Witness reviews deposition)

THE WITNESS: Okay.

Q. (MR. LOVELESS) Do you recall what you testified to on that day?

A. According to that, I said I drew my weapon.

Q. Do you recall now which -- Was that correct, or was what you're saying here today correct?

A. What I've said today is correct. My weapon

never left my holster. I might have said I withdrew my weapon, but I was mistaken when I said it. I hadn't made a report or anything since the incident happened.

Q. Okay. You said at that time that you withdrew your weapon and that you walked him back to the vehicle and stood there when the officers -- until the other officers arrived. Is that correct?

A. (Indicating in the affirmative)

MR. LOVELESS: That's all I have.

THE WITNESS: But in that statement that's what it says.

THE COURT: Okay.

MR. ADKINSON: Can I have just one minute, Your Honor?

THE COURT: Yes, sir.

REDIRECT EXAMINATION BY MR. ADKINSON:

Q. Officer Townsend, you have with you a report that's dated 8/7/90. Did you prepare that report?

A. Yes, sir.

Q. Before you gave your deposition on -- in January, had you reviewed the report?

A. No, sir.

Q. And did you bring the report with you today?

A. Yes, sir.

Q. Okay. I would like for you to look at, on page 3 of your report, starting right here, when he says, "When he started coming back to your car." Would you read that for me.

A. Okay. Right here?

Q. Yeah.

A. "'Officer, I have to tell you something.' I got out of my patrol car and asked him what he wanted to tell me. He said, 'I'm on probation.' I asked him for what, and he said, 'Murder.' I kept my hand on my service weapon and ordered him to step back into his vehicle, get in and place both hands on the steering wheel. He did. And at that time Sergeant Ferris drove up to the scene."

Q. Okay. Now, this report that you prepared was prepared on what day?

A. August 7, '90.

Q. And that's the same day this incident occurred; is that correct?

A. Yes, sir. Yes, sir.

Q. And in that report I believe you said you had your hand on your service weapon.

A. Yes, sir.

Q. The same as you testified to here.

A. Yes, sir.

MR. ADKINSON: I don't have anything else, Your Honor.

THE COURT: All right, sir.

MR. ADKINSON: Thank you. You can wait outside.

THE COURT: Thank you. You may be excused.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: You may call your next witness.

MR. ADKINSON: Ask Steve to come in, please.

(Witness present in courtroom)

MR. ADKINSON: May I proceed?

THE COURT: Uh-huh.

STEVE SUNDAY, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ADKINSON:

Q. State your name please, sir.

A. Steve Sunday.

Q. What's your occupation?

A. Investigator.

Q. With what department?

A. Walton County Sheriff's Department.

Q. Okay. And were you an investigator on August 7, 1990?

A. I was.

Q. Okay. And were you on duty that day?

A. I was.

Q. Do you know the defendant, Ernest Donald Suggs.

A. I do.

W. Did you have an occasion to come in contact with him on August 7, 1990?

A. I did.

Q. Steve, if you would, just tell the Court the events that led up to you first coming in contact with Mr. Suggs.

A. We had worked an incident at the Teddy Bear Bar where a bartender was reported missing.

Q. Okay. I want you to tell me the date and the time, please.

A. Okay. That was on August the 6th, shortly before midnight, I was called. During the course of the investigation that night, talking to -- interviewing witnesses, we located a witness who informed us that he had

left Ms. Casey with a white male. He gave us a description of that individual and a description of a vehicle that, when he left, was still in the parking lot when he left.

Q. Okay. What did you do as a result of the information that you received from this individual?

A. It was relayed to patrol officers to look for the vehicle, a suspect, or subject. At that point we just began looking, looking for the vehicle.

Q. To inquire about what?

A. About the missing girl, bartender.

Q. Okay. And did you subsequently learn that a vehicle spotting the one description -- Did you learn that a vehicle with the description that you were looking for had been spotted?

A. Yes. Approximately five o'clock Russell Townsend had reported --

Q. Five o'clock when?

A. In the morning on the 7th. Russell Townsend had spotted a vehicle matching the description of the one seen at the Teddy Bear Bar that night and that he was stopping the vehicle at 331 Mini-Mart.

Q. What did you do when you learned that information?

A. Proceeded to the 331 Mini-Mart.

Q. Okay. Did you -- How much time elapsed,

Steve, between the time you heard the vehicle had been spotted and the time you arrived there, approximately?

A. Three minutes, roughly.

Q. Okay. And after you arrived, what did you do?

A. Briefly talked with Russell Townsend about the stop. And then I proceeded to talk to Mr. Suggs. We wanted to question him, talk to Mr. Suggs about the incident.

Q. What incident?

A. The Teddy Bear Bar, the girl. We wanted to talk to him about an incident. And he --

Q. Did you tell him what you wanted to talk to him about?

A. I told him we wanted to talk to him about an incident.

Q. Did you say "incident", Officer Sunday, or did you tell him what you wanted to talk to him about?

A. I believe I, I believe I told him I wanted to talk to him about an incident which had occurred in Walton County. I told him we would like to transport him, if possible, to the Walton County Substation. He agreed and showed us how to operate his vehicle. And, therefore, we went from there --

Q. What do you mean he showed you how to operate

his vehicle?

A. It was a standard vehicle and there was evidently some type of way of starting it. And, so, that's what he --

Q. Did you place him under arrest at that time?

A. No, sir, we did not.

Q. Was he in custody?

A. No, sir.

Q. What did you want to question him about?

A. He was last, from what we understand, his description and vehicle was the last people seen at the bar with Pauline Casey and that's the reason we wanted to talk to him.

Q. To inquire about her whereabouts.

A. Right. That is correct.

Q. Did you ask him would he come to the substation to talk to you?

A. I asked him if he had no objections would he come to the substation and talk to us, and he advised that he -- he did not say no. He said, "Sure."

Q. What did he say? Did he say he would come to the substation?

A. He agreed to come to the substation.

Q. To talk to you.

A. Yes, sir.

Q. And how did he get to the substation?

A. Officer Frank DiRisio transported him to the substation.

Q. Okay. And how did his vehicle get to the substation?

A. Lieutenant Mann drove the vehicle in.

Q. Did you ask the defendant if he could --

A. He had no objections for Lieutenant Mann to drive the vehicle in.

Q. Okay. Did he -- when you observed him at around five o'clock that morning, had you information concerning the description of the person last seen in the bar that you knew of with Pauline Casey?

A. The description we had from our witness advised the subject was wearing shorts, possibly black shorts, some type of a pullover shirt, brownish type hair, a big, heavy --

Q. I asked you, did he fit the description?

A. He did.

Q. At that time had -- did you have any information or knowledge that Pauline Casey was dead or had been -- was missing as a result of some foul play?

A. Not at that point, we did not.

Q. Okay. When you arrived at the substation, what did you do?

A. We interviewed Mr. Suggs.

Q. Okay. Explain that. What do you mean you interviewed him? Did you tell him why you were talking to him?

A. He was told that we were investigating a missing bartender from Teddy Bear's Bar and that he matched the description and the vehicle matched the description.

Q. Matched, he matched the description of what, Officer Sunday?

A. He matched the description of the last person that was seen at Teddy Bear Bar.

Q. And his vehicle matched the description of what? His description matched -- his vehicle matched the description of what? The last vehicle there?

A. The last vehicle that was at the bar when Ray Hamilton left.

Q. Other than Ms. Casey?

A. Other than Ms. Casey.

Q. Okay. What did you do after you advised him of that?

A. We, at that point, asked Mr. Suggs if he would have any objections to us searching his house.

Q. Well, before you got to that point, did you ask him -- did you question him about that, about his being at the bar?

A. Oh, yes. He told us that he was at the bar earlier that afternoon, had talked with the bartender, looking, in fact, looking for work.

Q. At that point, had he been placed under arrest?

A. No, he had not.

Q. Did you have any basis to arrest him at that point?

A. No, sir, we did not.

Q. Was he free to leave?

A. He was.

Q. How long did you talk to him before -- Let me back up. At some point he signed a consent to search his house and his vehicle, I believe.

A. He did.

Q. How long did you talk to him before he signed a consent?

A. The consent to search the house was signed an hour and twenty-five minutes -- From the time he was stopped, brought in the substation, an hour and twenty-five minutes had lapsed.

Q. How about the consent on the vehicle?

A. That was approximately fifty-six minutes later.

Q. Fifty-six minutes later than what?

A. From the time he had signed the first consent to search the house.

Q. Okay. So when you got his vehicle to the substation, was a search conducted of it when you first arrived at the substation?

A. No.

Q. Okay. Do you have the consents to search the house and the vehicle?

A. I do.

Q. May I have those, please.

(Documents produced)

A. This is on the house and the jeep.

Q. Were you present when this was executed?

A. Yes.

Q. And this is witnessed by Officer Fred Mann. Was he also present?

A. He was.

Q. Were you and Mr. Mann both questioning Mr. Suggs?

A. That is correct.

Q. There's only one witness here on the consent to search the jeep. Do you know why that is?

A. No.

Q. Or you just failed to witness it?

A. Probably so. I may have failed to sign it.

Q. Were you there when it was executed?

A. Yes. Yes.

Q. Okay. And the second document here -- I'm gonna tear them apart.

MR. ADKINSON: I would like to offer this, Your Honor, as the consent to search the AMC jeep, executed by -- This is the original, Officer? Is that correct?

THE WITNESS: That is the original.

(Defense attorney examined document)

MR. LOVELESS: No objection.

THE COURT: Okay, sir.

Q. (MR. ADKINSON) Also, Officer, the other document you handed me is the consent to search the residence? Is that correct?

A. That is correct.

Q. And did you discuss both of these consents with him? Did you and Officer Mann discuss them with him?

A. Yes, we did.

Q. Did he sign those freely and voluntarily?

A. Yes, sir.

Q. Was he forced in any way to sign them?

A. No, sir.

Q. Did he express some concern to you about your searching his home?

A. He did.

Q. What -- Tell the Court about that.

MR. ADKINSON: Excuse me. Your Honor, I would like to offer the consent also of the home.

THE WITNESS: This is the original, too.

MR. ADKINSON: That is the original? Okay.

(Defense attorney examined document)

Q. (MR. ADKINSON) What concern did he express to you about the search of his home?

A. He was concerned that there were guns that were in his home.

MR. LOVELESS: I have no objection to this being admitted either.

THE COURT: All right. Then the consent to search the jeep will be admitted without objection as State's Exhibit 1 and the consent to search the house will be admitted without objection as State's Exhibit 2.

MR. ADKINSON: Okay.

(Exhibits marked accordingly)

THE WITNESS: He had -- there was concerns about guns that were located in his house and him being on parole and he was afraid of what would happen if the guns were found. That was basically his concern.

Q. (MR. ADKINSON) What was your response to that, Officer Sunday?

A. I told him that what we were trying to do was to eliminate him from the incident at the Teddy Bear Bar, that our main -- our concern was not the guns.

Q. What was your concern?

A. It was to eliminate him from Teddy Bear's --

Q. Did you tell him you were looking for a missing woman?

A. Missing woman, and we were to eliminate him from the incident.

Q. As a result of the consent to search that was executed by the defendant, did you proceed to his house to search his house?

A. I did.

Q. At that time, had the body of Pauline Casey been found?

A. No, sir.

Q. When you went in the house -- Tell me what you did when you went in.

A. We visually looked around the house. We discovered money, we discovered money in the sink.

Q. What do you mean "discovered money in the sink"?

A. There was money in the bathroom sink.

Apparently it had been wet.

Q. Had you learned earlier that there had been money taken from Teddy Bear's?

A. It was determined there was approximately two hundred dollars missing from the Teddy Bear Lounge.

Q. Was that money counted there at the house?

A. Not at the time it was located. It was probably counted later on when it was obtained, but not right then.

Q. But it was counted before -- You eventually obtained a search warrant for the house also, didn't you?

A. We did.

Q. Wasn't the money counted before the search warrant?

A. No.

Q. Look at your search warrant, Officer. Look at your probable cause in your search warrant.

A. Well, the money -- I don't believe anyone touched the money until after the search warrants were obtained. The money was observed, but I don't, I don't believe anyone counted the money.

Q. You didn't count it, then?

A. I did not.

Q. Okay. While at the house, did you learn that a woman's body had been found?

A. Shortly after the money was found, the body of Ms. Casey was found. It was shortly after the money was found.

Q. Okay. What did you do after that?

A. At that point I was advised by Captain Trusty to place Mr. Suggs under arrest, which I did.

Q. Okay. And were you with Mr. Suggs at the time?

A. I was, sir.

Q. Where was he at?

A. Sitting in the living room.

Q. Of his house?

A. He was.

Q. Okay. What did you do after you placed him under arrest?

A. He was transported -- I transported him to the Walton County Substation.

Q. Go ahead, tell us what followed after that.

A. We at that point obtained -- The house was secured. I left Fred Mann securing the house. We basically --

Q. What do you mean "secured the house"?

A. We --

Q. Did you cease your search of the house?

A. We did. And transported him to the

substation. It was later on in the afternoon we obtained the warrant, the search warrant for the residence to continue.

Q. Okay. What about the vehicle?

A. And the vehicle.

Q. You obtained a warrant to search the vehicle?

A. Yes.

Q. Had you searched the vehicle up that to point?

A. No, we did not.

Q. But you had a permission to search executed by him.

A. Correct.

Q. Which has been offered into evidence. And a permission to search the residence that had been executed by him.

A. Correct.

Q. But then you further went and got a search warrant for both; is that correct?

A. That is correct.

MR. ADKINSON: Your Honor, are those search warrants in the file?

THE COURT: Yes.

MR. ADKINSON: Okay. Those are also before the Court, and I would offer those, both of those

warrants, then. I don't have any other questions of Officer Sunday.

THE COURT: All right, sir. Do you have any objection to his proffer of those as State's exhibits?

MR. LOVELESS: I don't believe so, Your Honor.

(Defense attorney examined documents)

MR. LOVELESS: I don't have any objection to the warrants themselves being admitted into evidence.

THE COURT: All right. The warrant, then, for the residence will be admitted as State's Exhibit 3 and the warrant for the vehicle will be State's Exhibit 4.

(Exhibits marked accordingly)

MR. ADKINSON: I don't have any other questions, Your Honor.

THE COURT: Okay.

CROSS EXAMINATION BY MR. LOVELESS:

Q. Detective Sunday, when you first approached Mr. Suggs at the 331 Mart, your testimony is that you told him you wanted to talk to him about an incident that occurred in Walton County. Is that right?

A. Yes, sir.

Q. Was that your language?

A. I believe so, yes, sir.

Q. Okay. Did he ask you what incident?

A. I can't recall him asking that. I strongly remember that I told him that it was with reference to an incident in Walton County, Southern Walton County.

Q. Didn't he, in fact, say, you know, "What incident are you talking about?" And you said, "Well, we can talk about that later when we get down to the substation."

A. I told him we would like to talk to him about it at the Walton County Substation.

Q. So you put him off and said, "Let's wait until we get down to the substation and then we'll talk about it."

A. Yes, sir.

Q. All right. You're saying he wasn't in custody.

A. Correct.

Q. And he was free to leave. So he could have got in his jeep and driven off and you wouldn't have done anything. Is that right?

A. That is correct.

Q. Not, not a thing. He was the only suspect you had in the disappearance of a lady from a bar and you

were gonna let him go. Is that right?

A. He was, he was the only, he was the only person that we had, we thought we had knowledge of that would have been with Ms. Casey. We had a description of him, he matched the description, and that's what we were looking for, any witnesses –

Q. He matched the description as to the same clothes and everything, right?

A. Yes, sir.

Q. Okay. The last person seen with a missing person. You knew there was money missing from the cash register, right?

A. That's correct.

Q. Okay. And you also knew that the lady's car was still in the parking lot. So she didn't drive off, apparently. Is that right?

A. Correct.

Q. And this last person -- It's still your testimony that he gets in the car and he drives off and you're not going to do anything. Is that right?

A. He could have left, yes, sir.

Q. Okay. Did you tell him that?

A. I did not.

Q. All right. In answer to a couple of Mr. Adkinson's questions, you said that he had no objections to

doing what you asked him to do. Are you saying he voiced no objections?

A. He gave -- said, "No, I don't want to go." He did not indicate --

Q. He never said that. That's what you're saying.

A. Never, no, sir.

Q. All right. How did he act during this period of time? Was there anything unusual about him?

A. He appeared to be a little nervous. But as far as giving us any problems, he gave us no problems.

Q. Okay. Now, you've testified that Officer Townsend was there, Officer Mann, Officer Sutton and you. Is that it?

A. Officer DiRisio was present also.

Q. Okay. I believe there were five or six officers present and something like four patrol cars. Is that right?

A. I believe so, yes, sir.

Q. All right. Can you tell me and the Court the language that you used when it was decided how he would transport himself, or how he would be transported to the substation.

A. I advised him that if he had no objections that we would like to get him to the substation. If he

didn't mind anyone driving his vehicle, there was someone here that could. And he, after that, he told -- showed us, actually started showing me how to operate the vehicle. There was something about the vehicle, starting it, there was some type of catch or something.

Q. And he was placed in your patrol car. Is that right?

A. No, sir.

Q. In whose patrol car?

A. Officer Frank DiRisio.

Q. Okay. That's a regular patrol car. That's a cage car.

A. It's a marked unit, yes, sir.

Q. Okay. It's got a cage in the back.

A. Yes, it does.

Q. All right. And he was placed in the back seat, wasn't he?

A. Yes, he was.

Q. A cage in the back. Also, it's got the doors that can't be opened from inside, right?

A. That's correct.

Q. So he was secured inside the back of that vehicle.

A. That is correct.

Q. Now, did I understand you to tell Mr.

Adkinson that you had no information that there was -- that this lady was missing as a result of some foul play?

A. We had no knowledge of any foul play at that point.

Q. Okay. But you suspected an abduction and a robbery, did you not?

A. Yes, sir.

Q. Okay. You had her car still there, you had the till empty, except for some change.

A. Yes, sir.

Q. Right?

A. (Indicating in the affirmative.)

Q. Okay. You got him down to the substation. You took him where? Is there an office in there that you took him?

A. He was first sat at the dispatch office and then he was carried to our investigative office.

Q. Okay. And there were three officers present in there?

A. Two.

Q. Two. All right. Did you record what was said in there?

A. We did not.

Q. Did you advise him at any time that he had the right to refuse to speak to you and that he had the

right to have an attorney present?

A. Not at that point, we did not.

Q. Did you advise him that he had the right to get up and leave?

A. I did not, no.

Q. Okay. He didn't have his car keys then, did he?

A. I don't believe.

Q. Officer Mann still had his car keys.

A. I believe, I believe he may have still had them.

Q. You're talking about Officer Mann.

A. Investigator Mann.

Q. Yeah. Okay. All right. Was there any questions asked of you or the other officers as to why this was not being recorded, or whether it was being recorded?

A. I'm sorry?

Q. Did Mr. Suggs ask you if you were gonna record this?

A. I don't believe he did.

Q. Is it possible he did and you don't remember?

A. Well, it's possible, but I don't remember it.

Q. But, in fact, it was not recorded in any way.

A. No, sir.

Q. And it went on for at least an hour and

twenty-five minutes. Is that right?

A. Correct.

Q. And that was before the first consent was signed.

A. Correct.

Q. And then approximately another hour before the second consent was signed. Is that right?

A. Correct.

Q. What happened between the first two? The first one was for the house and the second one was for the car, right?

A. Yes, sir. After the consent to the house was signed, there was basically really nothing else said, as far as interviewing goes. Just that he had made comments himself about that he wished that she would hurry up and call.

Q. Uh-huh. During this time you asked him -- You said he didn't, he didn't seem anything unusual except just nervous, right?

A. Nervous. He looked sick. I think I may have asked him and he said his stomach was bothering him. And that was --

Q. Did you ask him if he had had anything to drink, any alcohol?

A. I may have asked him, but --

Q. You don't recall the answer?

A. I don't recall.

Q. Investigator Sunday, you do recall questioning him about his whereabouts --

A. Yes.

Q. -- on the night before. This was the early morning hours, and it was the night before that you were interested in, right?

A. Correct.

Q. And you do recall him telling you about the various bars that he visited. Is that right?

A. That's correct.

Q. Over a period of several hours, he talked to you about being at three or four different bars, didn't he?

A. That is correct.

Q. Did he also tell you about the beer he had at the house and him drinking that beer too?

A. He may have. I just -- I don't recall. He may have said he had been drinking.

Q. Okay. You didn't ask how much.

A. I don't remember.

Q. You didn't ask if he felt like he understood what was going on and felt capable of answering your questions.

A. I don't --

Q. Okay. You're saying -- You also said that that vehicle wasn't searched until after you came back from the house. Is that right?

A. It was not searched until the search warrants were obtained.

Q. Okay. You're saying nobody looked through the vehicle while it was sitting outside?

A. Yes, sir.

Q. Okay. Are you saying that Fred Mann didn't look through the vehicle when he got in it?

A. I, I don't -- I don't. To my knowledge, he didn't but he could, he could tell you that.

Q. You're inside. You don't know what's going on outside; isn't that right?

A. That's correct.

Q. Wasn't it during that time that they were taking the tire impressions off of that vehicle?

A. That I don't know.

Q. In fact, Investigator Sutton did take tire impressions off of that vehicle, didn't he?

A. He did.

Q. Using a spray can of WD-40, or something like that. Is that right?

A. I believe he did.

Q. And that was -- Then they made pictures of

those and he distributed them to the deputies to look for tire prints, right?

A. Well, there were photographs taken from the scene, Polaroid shots, and those were probably --

Q. There were Polaroid shots of the tire impressions too, were there not?

A. I --

Q. The ones that came up missing later and there was only one that could be found? Do you remember that?

A. I believe the ones that were distributed were the ones that were at the Teddy Bear Bar.

Q. Do you think you might be mistaken about that?

A. I'm not mistaken. I just -- I believe, that's what I believe on the photographs.

Q. All right. Okay. Did someone -- was someone looking at the outside of the vehicle to determine if there was any evidence on the outside of the vehicle?

A. I don't know. Like I said, I was inside. I don't know.

Q. Well, did you do the affidavit for that search warrant?

A. Yes. Yes, sir.

Q. Okay.

A. I believe so.

Q. Well, then, somebody must have told you that they had what they suspected to be blood on the outside of the vehicle. Is that right?

A. Well, I probably looked at it earlier -- or later. But at that point, when Mr. Suggs was in our presence the first -- in the morning, I didn't, I didn't go out to the vehicle.

Q. Investigator Sunday, you are the lead investigator in the case; is that right?

A. That is correct.

Q. So it's your responsibility to collect all of this and to know what's in this file. Is that right?

A. That is correct.

Q. Okay. Now, about going to the house. You said he was concerned about the weapons in the house. Is that right?

A. That is correct.

Q. Okay. Do you recall the exact language that you used when talking to him about that?

A. I don't recall the exact language, but I do remember telling him that we were -- our concern was to eliminating him from this incident at the Teddy Bear Bar.

Q. Okay. How did you expect a search of that house to eliminate him?

A. I'm sorry?

Q. How did you expect a search of the house to eliminate him as a suspect?

A. Well, we asked -- he admitted to us that he had been at Teddy Bear Bar, that he did talk to the bartender. And when we asked if he would have any objection to us searching his residence, he said no.

Q. My question, Investigator Sunday, is how did you expect the search of the house to eliminate him as a suspect? Did you mean to say that if you searched the house and found nothing to link him to the crime that you're gonna let him go? Did you mean that?

A. We told him that our concern was to eliminate him.

Q. Officer Sunday, apparently I'm not making myself clear. Did you mean to tell him that if you searched the house and found no evidence linking him to the crime that that would eliminate him as a suspect and you were going to let him go? Is that what you meant by saying that?

A. Basically, yes, if there was no evidence there.

Q. All right. What evidence did you find there that linked him to any crime at the Teddy Bear Lounge?

A. When we first -- We observed money when we first come in.

Q. Okay. About that money. You indicated it

wasn't counted; is that right?

A. Not in front of me, it was not.

Q. You're aware what's in that affidavit, are you not, on the search warrant?

A. Yes.

Q. Mr. Adkinson alluded to that a few moments ago. The affidavit and search warrant says, does it not, one hundred and seventy-three dollars in currency?

A. Yes, sir.

Q. If you didn't count it, how did you know how much was there?

A. I did not count it myself.

Q. Investigator Sunday, at the house, when you went -- before you went to the house, the thing about the guns came up. Do you think that you -- You can't remember your exact words of what you told him about don't worry about the guns?

A. What I can remember is telling him that we -- our main concern was eliminating him from the incident, we were not concerned about the guns.

Q. Did you say something like, "Don't worry about the guns, that's not what we're worried about, we're not interest in that."?

A. Well, he was told that we were eliminating -- we wanted to eliminate him from the incident.

Q. All right. At that time you didn't know whether or not a person -- that person was alive or dead.

A. That is correct.

Q. You did not know whether or not a weapon was used in the incident, if there was one, like that.

A. That is correct.

Q. Is that right?

A. Correct.

Q. Now, you indicated, also, that FDLE came into this at some point in time, the crime scene people were called, right?

A. That is correct.

Q. Did they arrive before you got the second search warrant -- or got the search warrant? Excuse me.

A. They were in the process of doing the body scene when, when all this was going on with the search warrant.

Q. Okay. Did you have them check that vehicle before you did the search warrant?

A. No, sir, I did not.

Q. Okay. Part of the grounds for the search warrant was the fact that there appeared to be blood on the outside of the vehicle. Is that right?

A. Yes, sir, I believe so.

Q. You are aware that that test for blood came

up negative, there was no blood on the outside of the vehicle. Is that correct? You're aware of that, right?

A. Yes, sir.

Q. Weren't you, in fact, aware of that before you did the search warrant?

A. That it was not blood?

Q. Yeah. Laura Rousseau came up and did a presumptive test and said, "That's negative. That's not blood." Isn't that right?

A. That I don't remember.

Q. That did happen, did it not?

A. I was not there when that was done. I do not know.

Q. Okay.

A. I believe Lieutenant Mann was -- may have been present for that, but I was not.

Q. All right. The money, you do know that approximately two hundred dollars was missing from the Teddy Bear Lounge, right?

A. Approximately.

Q. And that was not the amount of money that was found in Mr. Suggs' house. Is that right?

A. I believe so, yes, sir.

Q. Okay. When you went through on this supposed consent search, were there any weapons identified as

possibly being involved in any sort of criminal act?

A. No, sir.

Q. Okay. Nothing was tested -- Nothing was found to have blood on it or anything like that.

A. I did not see anything, no, sir.

Q. Okay. All right. Why was Mr. Suggs taken back to the house?

A. On a consent to search, it's our policy, if we're gonna -- we would rather have him present during that time.

Q. Okay. And it's your testimony that all this time he was still free to leave.

A. Yes, sir.

Q. Okay. Up until the point in time when you got word that the body was found. Is that right?

A. Yes, sir.

Q. Okay. And that finding of the body gave you enough to arrest him? Is that right?

A. He was arrested, yes, sir.

Q. Okay. What did that add?

A. Well, I don't know how to -- he was seen -- our witness had described him as being the last person at the Teddy Bear Bar. He admitted that he was there, or had been talking to her. We did locate --

Q. He also told you that she was fine and in

good health when he left, too, right?

A. He did.

Q. And the only thing you found, then was the body. And based upon that alone and everything else that you've testified to, you arrested him for that murder. Is that right?

A. I did.

Q. All right. Okay. Did you ask him then if he wanted to give another statement?

A. Yes, sir.

Q. What did he tell you?

A. It was still no. He gave no other statement at all.

MR. LOVELESS: Okay. That's all I have.

REDIRECT EXAMINATION BY MR. ADKINSON:

Q. Officer Sunday, when the body was found, you realized you had a murder on your hands, didn't you?

A. That is correct.

Q. That there was, in fact, a crime, right?

A. Correct. That is correct.

Q. Did the defendant appear intoxicated when you were talking to him?

A. No, sir.

Q. Did he appear to -- I mean, you could

understand what he was talking about?

A. I did.

Q. Didn't he, during this interview with him, tell you, you know --

MR. LOVELESS: Your Honor, I'm gonna object to the form of the question. I believe this is supposed to be direct examination.

MR. ADKINSON: I don't understand.

THE COURT: Well, complete the question and give me an opportunity to respond to the objection. His objection was leading.

MR. ADKINSON: Oh, is that what it was? Okay. I didn't understand what his objection was. Is that what you're objecting to?

MR. LOVELESS: Yes, that's it.

MR. ADKINSON: I'm sorry. I'll start over then.

Q. (MR. ADKINSON) Did the defendant say anything to you about assisting you in locating Ms. Casey?

A. The defendant?

Q. Yeah, Suggs.

A. No, sir.

Q. What did he say to you about her appearing or showing up?

A. He continued --

THE COURT: May I interrupt a moment? At what point in time is this?

MR. ADKINSON: At the point from where he was taken from the -- to the substation, when he was stopped on the road to the substation.

THE COURT: Back at the substation and before the house.

MR. ADKINSON: Yes.

THE COURT: Okay.

THE WITNESS: Sitting in the office he continued to ask -- or say that I wish that, I wish she would hurry up and call. I wish she would call in. And that was repeated numerous times by the defendant.

MR. ADKINSON: All right. Thank you. I don't have any other questions.

MR. LOVELESS: I don't have anything else.

THE COURT: Okay, sir. Thank you, sir.

MR. LOVELESS: Oh, I'm sorry. Yes, I do. I'm sorry.

RECROSS EXAMINATION BY MR. LOVELESS

Q. Investigator Sunday, once you did the search warrants, what was done with them?

A. They were executed, carried back to the

residence and executed.

Q. Who was present at the residence?

A. Myself.

Q. Was Mr. Suggs present at the residence?

A. No, he was not.

Q. What were done with -- what was done with the copies?

A. I believe a copy was given to -- Are you talking about a copy of the report?

Q. Yes, a copy of --

A. It was given to Mr. Suggs.

Q. You believe that Mr. Suggs was given a copy of the search warrant.

A. I believe so.

MR. LOVELESS: That's all I have, Your Honor.

MR. ADKINSON: One other question.

REDIRECT EXAMINATION BY MR. ADKINSON:

Q. Officer Sunday, when was the vehicle, in fact, searched? Do you know?

A. After the search warrant was obtained, it was that afternoon, the afternoon of the 7th.

Q. Okay. That's when it was searched.

A. That is correct.

Q. Okay. Is that when it was processed by FDLE?

A. Yes, sir, I believe so.

MR. ADKINSON: Thank you.

THE COURT: Okay. Thank you, sir.

(Witness excused)

MR. ADKINSON: I don't have any other testimony.

THE COURT: Okay, sir.

MR. LOVELESS: If you are not going to call Lieutenant Mann, I would like to.

MR. ADKINSON: Okay.

(Witness present in chambers)

FRED MANN, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LOVELESS:

Q. State your name, please.

A. Fred Mann.

Q. Occupation?

A. I'm an investigator with the Walton County Sheriff's Department.

Q. And, Investigator Mann, were you involved in the incident involving the stop and questioning of Ernest Donald Suggs on or about August the 7th of last year?

A. Not the stop. I was present after he was

stopped and I did interview Mr. Suggs.

Q. Okay. Did you at any time take possession of his vehicle?

A. Yes.

Q. Explain that to me, please, how that occurred.

A. After the initial stop, myself, Investigator Sunday and Investigator Sutton arrived at the parking area of 331 Mini-Market. It was discussed, through Investigator Sunday, that Mr. Suggs be interviewed down at the substation, and he subsequently agreed to have his vehicle driven down. I, in fact, did drive the vehicle down to the substation.

Q. You say he agreed to have his vehicle driven down. What choices was he given?

A. I don't understand you.

Q. What were the options?

A. I'm, I'm sorry. I'm not trying to be bad or anything, I just don't understand.

Q. If he did not agree to have his vehicle driven down, what were, what were you gonna do with the vehicle? Were you gonna leave it there?

A. Generally, we do not leave vehicles that is owned by someone else at an area simply because of the liability and safety of the vehicle.

Q. The frame of reference of my question is, from what I can tell, the options are: either the vehicle stays there, he drives it down or someone else drives it down for him.

A. Well, yes, sir.

Q. Were those options explained to him?

A. No, sir.

Q. What options were explained to him?

A. I don't know if there was any option explained to him. I think Mr. Suggs agreed to accompany Investigator Sunday down to the substation and he agreed to have his vehicle driven down.

Q. Okay. Was he told, in your presence, that he could drive his vehicle down there if he wanted to?

A. No, sir.

Q. Would he have been allowed to drive his vehicle down there?

A. I don't see why not, yes, sir.

Q. Did he ask to drive his vehicle down there?

A. No.

Q. Okay. And, in your presence, was there any mention of his driving that vehicle down there made?

A. No, sir. What I recall is Investigator Sunday asking Mr. Suggs to accompany him and would he agree to have someone drive his vehicle and Mr. Suggs agreed.

Q. Is that the language that was used, the best you can remember?

A. The best I can recall, it would be the language that was used. As I recall, Mr. Suggs said something about the shifter, or something like that, and showed how to maybe shift the vehicle.

Q. Okay. Did you check the interior, the contents of the vehicle during that trip or before you got into the vehicle, during the trip or at the time you arrived at the substation?

A. No, sir. The only thing I did was put on a pair of gloves and started the vehicle and drove it to the substation, locked the vehicle up at the substation and carried the keys inside.

MR. LOVELESS: All right. That's all I have.

THE COURT: Mr. Adkinson.

CROSS EXAMINATION BY MR. ADKINSON:

Q. Officer Mann, were you present when the two consent to search authorizations were executed by the defendant?

A. Yes, sir.

Q. Was he forced in any way to sign these consent to search? And when I say "consent to search," I'm referring to State's Exhibit Number 1 and State's Exhibit

Number 2, which are the consent to search the jeep and the consent to search the house.

A. Did you say was he forced?

Q. Yes, was he forced to do so?

A. Definitely not. He verbally agreed several times prior to signing the consent.

Q. What do you mean "verbally agreed"?

A. I had asked him about wanting to search his vehicle and the house.

Q. And what did he say?

A. He agreed. I mean, there was no problem. As a matter of fact, I mentioned the house and he said, "You can search my car." I mean, it was that type of an agreement. I mean, there was no, there was no hesitation on Mr. Suggs' part at all. There was no problem of us searching either his house or his vehicle.

Q. Okay. These, did you ask him to read these consents to search?

A. Yes, sir, I did.

Q. And they are witnessed by you on one of them and you and Mr. Sunday on the other. Do you ask him if he understands these consents to search?

A. Generally what I do is read them as I do my rights form, you know, I hold them. And I'm not sure if Mr. Suggs read it or not.

Q. But did he either read it or you read it to him?

A. Yes.

Q. And did you ask him did he understand --

A. Yes.

Q. -- what he was signing?

A. Yes.

Q. But before you read this to him, he had offered, are you telling me he had offered to allow you to search his home and vehicle?

A. Yes. I would say more than once, more than one time did he consent that it was all right to search.

MR. ADKINSON: Okay. I don't have any other questions, Judge.

THE COURT: Okay.

REDIRECT EXAMINATION BY MR. LOVELESS:

Q. Officer Mann, you can recall no reservations he had about searching the house?

A. Other than the fact that he was on parole for murder and we might find some guns in the house.

Q. Okay. And what was he --

A. That was his only reservation.

Q. What was he told about that?

A. I asked him, I said, "How many guns are you

talking about?" And he said, "Two or three guns." I said, "I'm looking into the disappearance of a young lady. That's my concern."

Q. Did you tell him you weren't concerned with the guns and don't worry about that?

A. What I -- I'm not -- I can't say verbatim. But I would have said that, "My concern is for the disappearance of this young lady. What your problem is in Alabama does not concern me."

Q. Okay. Basically, you wanted to allay any fears he had about those guns causing him any problems with you. Is that right?

A. Basically. I was, I was searching for a disappearance of a young lady and that was my primary concern.

MR. LOVELESS: All right. I don't have anything further.

RECROSS EXAMINATION BY MR. ADKINSON:

Q. Was that clear to the defendant?

A. Yes. Yes, I feel like it was, because he went ahead and --

Q. And was that clear to the defendant prior to the time he signed those consents to search?

A. Yes. Because, again, he verbally consented

and then, then signed his signature on a written consent.

Q. Okay. Was he intoxicated?

A. I did not feel he was intoxicated, no, sir.

MR. ADKINSON: I don't have any other questions, Your Honor.

REDIRECT EXAMINATION BY MR. LOVELESS:

Q. Did you ask him if he had had anything to drink?

A. No, sir, I do not recall.

Q. But you did -- he was questioned about where he had been that night before.

A. Uh-huh.

Q. And he did testify as to -- he did tell you that he'd been to a number of bars.

A. He said that he had visited a number of bars. He did not appear to be intoxicated, nor did I smell the odor or presence of alcohol on him.

Q. Do you recall him being ill?

A. He, if I were to say anything, he requested a lot of water, drank a lot of water, which we allowed him to have. He complained about his stomach hurting, as I recall, which I think we all have a little problem with our stomach occasionally.

Q. One last question. Can you acount for an

hour's difference between the signing of the consent to search the house and the consent to search the vehicle?

A. No, sir, I don't. I know that it was verbally consented and it may have been an oversite on my or Investigator Sunday's of getting him to sign the search warrant on the vehicle.

Q. Okay. But you're aware that this consent to search the vehicle was signed fifty-six minutes later than the consent to search the house.

A. I know there's a time difference, yes, sir.

MR. LOVELESS: Thank you.

THE COURT: Anything further of this witness?

MR. LOVELESS: No, I have nothing.

THE COURT: Thank you, sir.

(Witness excused)

MR. LOVELESS: Your Honor, I would call the defendant, Ernest Donald Suggs.

ERNEST DONALD SUGGS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LOVELESS:

Q. Would you state your name, please.

A. Ernest Donald Suggs.

Q. And you are the defendant in this particular

case, Mr. Suggs; is that correct?

A. Yes, sir.

Q. All right. Now, you need to speak up so she can get that on tape.

A. All right.

Q. Mr. Suggs, I want to ask you about the incident on Highway 331 where you were stopped by the Walton County Sheriff's Department on or about August the 7th. Do you recall that?

A. Yes, sir.

Q. Where were you going when the officer blue-lighted you?

A. Back to the house. Back to where I was staying.

Q. When you got out, when you -- When the officer first approached the car, what did he say to you?

A. If I remember correctly, he wanted my driver's license and my registration.

Q. What did you say to him?

A. I told him I had my driver's license, I didn't have my registration. I believe I had a title.

Q. Did you ask him any questions?

A. After I gave him my license, I asked him what did he stop me for, you know, what was wrong with the jeep, and he said nothing.

Q. Did he respond in any other way?

A. He said that there was something about an incident, there was something else, or some other incident, or something like that.

Q. Do you recall about the time that this occurred?

A. About five o'clock, I believe.

Q. Okay. Did you have a watch on?

A. Yes, sir.

Q. Now, in the ten to twelve hours prior to that incident, had you consumed any alcoholic beverages?

A. Yes, sir.

Q. Okay. Do you recall about how much?

A. I'd been to several bars, been drinking in them. I purchased some beer the afternoon before and drank a good bit of it that night after I left the bar, after I come home.

Q. Can you estimate how much you had had to drink, how many drinks?

A. At the bars that would be pretty hard. I would think maybe --

Q. How much of the case of beer did you drink?

A. I don't believe there was a half a case left the next morning.

Q. What do you mean "the next morning"? When

you were taken back to the house? Is that what you're referring to?

A. Yes, sir.

MR. ADKINSON: I'm sorry. Did I ever understand how many? Did he say how many he had drank?

MR. LOVELESS: He said he -- I think his testimony is that he didn't believe there was a half a case left when he was taken back to the house.

MR. ADKINSON: Oh, okay.

Q. (MR. LOVELESS) Is that correct, Donald?

A. Yes, sir.

Q. Okay. At the bars that you visited, can you say how much you would have had at each bar? Would you have had more than one drink at each bar?

A. One or two of the bars, probably just one drink or two drinks. At the other bars, it was quite a few.

Q. Okay. When did this drinking actually start, about what time? Do you recall?

A. About four-thirty or five is when I started going to the bars the afternoon before.

Q. Okay. When you -- Do you recall the officer saying, Officer Townsend saying he asked you for your registration and you said you didn't have one and that you would look for a title?

A. Yes, sir.

Q. All right. Tell the Court what happened when you found the title. What did you do?

A. Well, I told him there was a title there. I told him I would look for it. He said okay, and he turned around. I opened the glove box. I had the title and the bill of sale in there. I'd been told that I had to keep it in the truck. I got the title and got out and was walking back to the car.

Q. All right. What happened when you got to the officer's car?

A. About the time I got even with the front of the car, he was looking up. He got out of the car and I said, "Here's the title." He said, "Step back and put your hands on the fender," I guess. He said, "Put you hands on the front end." At that point I told him I was on parole out of Alabama.

Q. Okay. What was his response?

A. No change from the way he'd gotten out of the car.

Q. And how did he get out of the car?

A. I don't know how to explain it. I guess you would say pretty quick. I mean, I didn't understand. You know, I was coming back there to bring him the title. He gets out and acts like he's getting a little aggressive now.

So I assumed he had heard something on the radio, you know.

Q. Okay. Did you stay there at that car?

A. He walked me back up to the jeep.

Q. Okay. What did he say to you at that time?

A. Nothing, I don't believe, after, after he told me to put my hands on the fender.

Q. Okay. Did you stay outside the car? Or how were, how were you when the other officers arrived? Were you standing outside the car? Exactly where were you?

A. He told me to sit in the vehicle, he would escort me, I guess you would say, to the jail. And he had stood there. So that's where I was when whoever the first officer was that drove up.

Q. Okay. How many officers do you recall seeing there?

A. There was at least six.

Q. Okay. And how many vehicles?

A. Four, I believe.

Q. Okay. Were you ever told that you were under arrest there at the 331 Mart?

A. No, sir.

Q. Were you ever advised that -- of any of your rights there at the 331 Mart?

A. No, sir.

Q. Okay. Did you believe you to be free to

leave at any time that you wanted?

A. I don't believe there was any question of leaving after I was escorted to the jeep. The officers drove up. Everybody I asked would not tell me what was going on. I repeatedly asked. Just some incident, that was all, and that was the most reply I could get. The officer told me there was nothing wrong with my vehicle.

Q. You're talking about the officer that stopped you?

A. I asked him. He just said it was some other incident. He said there was nothing wrong with the jeep. I had a problem with some short on the back end, with a light. That's what I assumed I had been pulled over for to begin with.

Q. You mean electrical short?

A. Yes, sir.

Q. All right. Now, how, how did the conversation about going back to the substation go? Tell us about that.

A. That officer escorted me up to the jeep. A couple of more officers come up in different cars. Then one pulled up in front. There were three officers in it. I believe they were all detectives. None of them had uniforms on. One of them came up, they talked for a few minutes, and then he asked me would I go back to the substation. I kept

on asking them, you know, "What's going on? What do you want to talk about," or whatever. He said, "We need to go back to the substation and talk about it."

Q. What did you respond?

A. It was obvious, with all the officers right there at the door of the jeep, it wasn't more or less a question, it was more or less a statement, "Well, you're going one way or the other."

Q. Okay. What was the discussion of how your vehicle would get back there? Tell us about that.

A. It's about the same thing. You know, it wasn't a question, it was I was going one way or the other. I figured, well, I might as well keep them from tearing the jeep up. I had had some problems a little bit with the transmission. If you didn't get it cranked and drive it right, well, then you would have to have it towed.

Q. Were you given the option of driving the vehicle back?

A. No, sir.

Q. Did that ever come up?

A. (Indicating in the negative)

Q. Were you given the option of leaving at any time that you wanted to?

A. No, it was that I was going to the station.

Q. What do you mean you were going to the

station?

A. They were gonna ask me some questions at the station. That was the -- They wouldn't tell me what was going on there.

Q. Are you saying that's the impression that you got?

A. That's the only impression I could get.

Q. When you got back to the station, were you questioned there?

A. At the station?

Q. Yes.

A. Yes, sir.

Q. By whom?

A. Investigator Sunday and Mr. Mann.

Q. Do you know how long that questioning lasted?

A. From reading, I think it was eight o'clock. It was well after daylight.

Q. Officer Sunday, I believe, has testified an hour and twenty-five minutes. Is that approximately correct?

A. From what I can remember, I was questioned from a few minutes after I arrived at the substation until right before I was taken back to the house.

Q. And do you recall about what time that was?

A. From reading, I think it was about eight

o'clock.

Q. Did you note the consent forms are timed, one of them 7:28 and the other 6:32? Do you recall those times being on there when you signed them?

A. That I couldn't say. They were, they were just both handed to me, you know. I would not consent to the questioning that had went on for a little while. Lieutenant Mann left and come back and said, "Well, look, we don't care about anything, all we're looking for is the girl."

Q. When you say you would not consent, did you refuse to consent at one time?

A. They had asked me repeatedly, "Well, if you haven't got anything to do with it, you know, let us look in the house and the jeep." And I said, you know, "I don't like anybody going through any of my stuff, or anything like that." They kept on. And then finally they came back and -- Lieutenant Mann had left and come back and asked me, "Well, look, we don't care about anything in the house, period, as long as it ain't got anything to do with the girl." I said, "What do you mean?" He said, "We're not looking for anything but for the girl." I said, "Okay, I'll sign it."

Q. Did you sign both of them at the same time?

A. Yes, sir.

Q. Within --

A. To the best -- From what I remember, yes, sir.

Q. Okay. How were you feeling during that time, physically?

A. Pretty tired.

Q. How long had you been up?

A. Since the day before and that morning, I guess.

Q. Do you recall the last time you had slept?

A. The morning before.

Q. Now, when was the first time that you ever saw a search warrant?

A. It would have either been Thursday or Friday up here.

Q. After you were arrested?

A. Yes, sir. I believe it was Thursday or Friday. It might have been Saturday. I was told that -- I was brought over to -- Past the sheriff's office and down that hall is an interrogation, I think's what it is, interview room. Mr. Mann and Mr. Sunday were there. They gave me the warrants and they said, "Do you understand what they are?" I looked and I said, "Well, it says search warrant. Yeah, I understand what they are." They said, "Okay." They said, "Well, you can't keep them with your

stuff at the jail," which I didn't understand. I was still in lock-up. I didn't know anything about the rules or anything. I couldn't even talk to anybody.

Q. At the time you were given the search warrants, how long had you been in jail?

A. A few days.

Q. Okay.

A. About a month later I finally, after I'd checked everything out, people told me, I wrote a letter to Sergeant Crenshaw and he got them for me.

Q. You're talking about the warrants?

A. Yes, sir.

MR. LOVELESS: Okay. I don't have anything else.

THE COURT: Mr. Adkinson.

CROSS EXAMINATION BY MR. ADKINSON:

Q. Did you ever say how many beers you consumed?

A. I'm not real sure at the bars. But --

Q. Which bar?

A. I'd been to four bars that evening.

Q. What bars had you been to?

A. The Hitching Post, Teddy Bear's, Bailey's. I can't remember the name of the other one.

Q. Hitching Post. Teddy Bear's -- which one did

you go to first?

A. I believe it was the one down on the coast.

Q. What's the name of it?

A. Below Teddy Bear's. I'm not sure of the name.

Q. The one you don't know the name of, that's the one you went to first.

A. (Indicating in the affirmative)

Q. What time did you go there?

A. About five o'clock.

Q. Okay. and which one did you go to next?

A. I believe The Hitching Post.

Q. Okay. And then which one? How many -- You don't know what you drank at The Hitching Post?

A. I was at The Hitching Post a couple times. The first time I was just there drinking, looking around, seeing what was going on.

Q. When did you drink the half case of beer you said you drank?

A. That evening after I returned, after I got back home.

Q. Are you saying you were drunk when you got to Teddy Bear's?

A. I didn't drink any of the canned beer except -- I believe I drank one when I got home and had a

sandwich that evening.

Q. I'm asking, are you saying you were drunk when you got to Teddy Bear's?

A. No, sir.

Q. You were not. Okay. Do you know Pauline Casey?

A. Yes, sir.

MR. LOVELESS: Your Honor, I'm gonna object to this line of questioning. It's not relevant to this particular issue. I'm also gonna advise my client to not testify -- to not answer any questions concerning the actual incident itself. We're concerned here only with the motion to suppress.

THE COURT: All right.

MR. ADKINSON: Well, Your Honor, he raised the question that he was drunk from -- or had drank for about twelve hours. So, I mean, I think I have the right at this point, then, to cover the time frame from that afternoon until when he was arrested and wherever he was and who he drank with. He's the one that said he drank for that ten or twelve hour period. He just testified to that. And he's raising the issue of his, apparently his intoxication. And I think I fully have the right to question him where he was at during that time and

what he drank. And if Pauline Casey was involved in some point there, I think I have a right to question him about that. He said he was at Teddy Bear's and that's where she was at.

THE COURT: First, the objection to that specific question will be sustained. Then if I might inquire of each of you to advise me of your understanding of the law as it relates to the scope of inquiry in a situation like this, where the defendant has moved to suppress.

MR. LOVELESS: Your Honor, it's my understanding that the only thing that is relevant is his state of mind at the time subsequent to the arrest, the condition that he was in physically, the impressions that were given to him and the statements of the officers. Whether or not he felt he was under arrest, whether or not he felt was in custody, whether or not he was capable of giving a knowingly intelligent waiver, that's the issue.

THE COURT: Okay, sir. Mr. Adkinson.

MR. ADKINSON: Well, I don't really disagree so much with him. I think, though, that I have a right to question him as to his whereabouts, as to what he drank, where he was at, you know, who he was with, so forth, during that time frame if he is

saying that time frame and what he did during that affected his state of mind. I mean, that's open. That's my understanding.

THE COURT: Okay, sir.

MR. ADKINSON: If not, I'll get away from it and go on.

THE COURT: But the specific question that you had asked --

MR. ADKINSON: I have no objection. I agree with the Court as far as knowing Pauline Casey. But going from there, I think I have a right to continue to ask him, "Well, from Teddy Bear's to wherever you drank, what did you drink this hour, where," and go on.

THE COURT: Okay. And I don't believe that you had drawn an objection to that line of questioning.

MR. ADKINSON: Well, at this point I think the only question he objected to was did he know Pauline Casey. And I agree that that is not...

Q. (MR. ADKINSON) What time were you at Teddy Bear's?

MR. LOVELESS: I would ask you to be more specific.

MR. ADKINSON: On August the 6th of

1990.

THE WITNESS: As far as when I arrived, I have no idea.

Q. (MR. ADKINSON) What time did you leave Teddy Bear's?

A. The only time I know for sure is when I left. It was around ten o'clock.

Q. Okay.

A. I know I was --

Q. You know what?

A. Usually I try to be home by around ten, quarter after ten. That's when the weather came on the news. Down here I've learned, in riding a motorcycle, if you don't pay attention to the weather you end up sitting quite a few hours waiting on it to stop raining.

Q. So you left Teddy Bear's around ten.

A. Yes, sir.

Q. Where did you go from there?

A. That's when I went back to the house and went home.

Q. Went back to the house and went home. What did you do?

A. Sat around and watched the news. Ate some supper, or ate a couple of sandwiches. Piddled around the house. I worked on the jeep a little while. Piddled around

on the dock.

Q. For how long?

A. Probably for a few hours that evening. Until probably twelve-thirty or one.

Q. Twelve-thirty or one when?

A. In the morning.

Q. Well, now, you just said you were at Teddy Bear's at ten on August the 6th. Are you saying you were there at ten o'clock that morning?

A. No, sir, that night.

Q. That night. And then -- So you were at your home for how many hours, then?

A. Well after I left there, I went on home.

Q. Well, how long were you there?

A. Most of the rest of the morning until I was pulled over. I had left twice.

Q. What do you mean you had left twice?

A. I had left.

Q. Where had you gone?

A. Just drove up the road.

Q. To where?

A. The first time I drove to, I guess, the fruit market, which would be south of the house. The second time I had drove all the way across the bridge.

Q. To where?

A. That service station, whatever it is.

Q. Where?

A. Right on the other side of the 331 bridge. North of the 331 bridge.

Q. And this was from ten o'clock until -- Somewhere between ten o'clock and five o'clock on August 7th you left your house twice, once to a fruit market that was south of your house and --

A. (Indicating in the affirmative)

Q. What time of day was this?

A. That was pretty early.

Q. What time?

A. Between ten and twelve, I guess. I had worked on the jeep.

Q. What were you doing -- Go head. I'm sorry.

A. I had worked on the jeep, piddled with the ignition. And the only reason I had left was to see if I had fixed it.

Q. Was the fruit market open?

A. No. I just used it to turn around.

Q. Okay. And then you went back home.

A. (Indicating in the affirmative)

Q. And this was around twelve o'clock you say, supposedly.

MR. LOVELESS: Your Honor, if he has questions

about him drinking, I would suggest that he ask them. I would specifically object to this line of questioning, because he indicated that the issues was whether or not he was drinking. He has yet to ask a question about that.

THE COURT: Okay, sir. Mr. Adkinson, you will need to focus the questions on the drinking.

Q. (MR. ADKINSON) Okay. Did you drink between ten and twelve?

A. Yes, sir.

Q. How much did you drink between ten and twelve?

A. Four or five beers, I guess.

Q. Okay. And then you, then you left your house a second time.

A. Yes, sir.

Q. Between the first time and the second time you left your house, how many beers did you drink?

A. It would have been more than a six-pack. I don't believe there was a case left.

Q. And where did you, where did you go?

A. The second time is when the officer pulled me over. Just across the bridge and back.

Q. You just went to the filling station and turned around and come back.

A. Yes, sir.

Q. And you had how many beers between the fruit market and that place?

A. It would have had to have been more than a six-pack. I had bought a case that afternoon.

Q. How many?

A. Probably six, seven, eight, something like that.

Q. So you're talking about roughly six, seven, eight. You're talking before two six-packs of beer, then, roughly, between twelve o'clock -- well, from ten o'clock until five o'clock in the morning.

A. Something like that.

Q. Okay. Are you saying you were intoxicated?

A. I wasn't stoned or falling down drunk, but I was pretty high, yes.

Q. You were -- I thought you said you piddled around on the dock. What did you do on the dock?

A. Just piddled, really.

Q. What do you call piddling? What were you doing?

A. I had moved some boards. There were some boards out there that were rotten and that was part of the fixing up I was doing at the house.

Q. And this was somewhere between midnight and

five o'clock in the morning?

A. Most of the piddling on the dock was done before twelve o'clock.

Q. Okay. Well, when was the work on the jeep?

A. A little bit right after I got home from the bar and then some more later on earlier the next morning.

Q. Well, from twelve to five, what did you do?

A. Mostly laid around in the house. I tried to go to sleep. I didn't, so I got up. I figured I'd go ahead and do something.

Q. Okay. What did you do?

A. Worked on the jeep mostly.

Q. Okay. And did you fix the starter on the jeep?

A. It wasn't the starter. It was in the ignition system.

Q. Did you fix it?

A. I thought I had. But when I drove it, I found out I hadn't.

Q. Okay. But you worked on it.

A. (Indicating in the affirmative)

Q. And you did some repair work on the dock.

A. More or less just marking the boards.

Q. This was at dark, wasn't it?

A. Yeah, it was dark. It was nighttime.

Q. When the officer asked you would you go back to the substation, what was your response?

A. It wasn't, it wasn't a question, it was a statement.

Q. I asked you, when he asked you would you go back to the substation, what was your response?

A. I guess so.

Q. Okay. So you told him you would, didn't you?

A. Yes, sir.

Q. And did you, in fact, show Officer Mann how to shift the gears on your vehicle to that he wouldn't have problems driving the vehicle?

A. I showed him how to start it mainly and how to work the gears, yes, sir.

Q. Okay. Did you read the consent to search the vehicle and the home?

A. No, sir.

Q. Did they read it to you?

A. No, sir.

Q. Do you know what it meant?

A. They just said it was a consent to search.

Q. Mr. – Do you know what it meant, Mr. Suggs?

A. I know what consent means, yes.

Q. Do you know what a consent to search meant Mr. Suggs?

A. It meant that they were going to do a search.

Q. You're familiar with law enforcement and your rights about searches and Mirandas, aren't you?

A. I know that you're supposed to be read Miranda.

Q. In fact, you have been arrested and tried and convicted for murder before, right?

A. Yes, sir, in Alabama.

Q. So you have been through the system.

A. That system in Alabama, yes, sir.

Q. Well – And I think you've been convicted of of an assault with an intent to murder also.

A. Yes.

Q. Is that correct?

A. (Indicating in the affirmative)

Q. So you were arrested for that charge also?

A. Yes, sir.

Q. So you knew you didn't have to sign this consent, didn't you, Mr. Suggs?

A. (No response)

Q. Excuse me?

A. That's why I wouldn't sign it until they came back and told me that they didn't care anything about anything in the house except the girl.

Q. That's what I'm saying, you knew you didn't

have to sign this concent, either one of them, correct, Mr. Suggs? You recognized that fact, didn't you?

A. Yes, sir.

Q. Okay. Did you attend high school?

A. (Indicating in the affirmative)

Q. Graduate?

A. I got a GED.

Q. So you can read and write.

A. Yes, sir.

Q. I don't have any other questions, Your Honor

THE COURT: Okay, sir.

REDIRECT EXAMINATION BY MR. LOVELESS:

Q. Mr. Suggs, is it your testimony that the approximately two six-packs of beer were the only things you had to drink?

A. I had drank at the bars that night.

MR. LOVELESS: I don't have any other questions.

THE COURT: Okay, sir.

MR. ADKINSON: I don't have anything else.

THE COURT: Okay, sir.

MR. LOVELESS: That's all I have to offer, Your Honor.

THE COURT: All right, sir. Do you care to

close, sir?

MR. LOVELESS: Your Honor, I think the issue is, as I stated a few moments ago, what was in the mind of Mr. Suggs. And I think it is clear, from the testimony of everyone involved, in spite of what the officers words were, that Mr. Suggs was the only suspect available to them. I think it was also clear, with any reason, that these officers were not going to release that suspect. I think it was also clear, with any reason, that he was not free to go. Regardless of that, Your Honor, the issue is not what the officers testified to, the issue is what was in the mind of the person hearing that, whether or not he would have reasonably felt that he was free to leave at any time, whether or not he reasonably felt that he was in custody. I think from the testimony, basically unrebutted, that is the only conclusion that he could have drawn, and he acted accordingly.

In addition, I think his actions were, to a great extent, maybe not controlled by the alcohol but it had a great deal to do with what was going on. Plus the fact, Your Honor, that this questioning occurred between five and eight a.m. Mr. Suggs has testified that he had not slept since the morning before; therefore, that must be taken into

consideration by the Court.

All things considered, Your Honor, I don't believe that there is any standard by which his statements and his consent can be considered to have been freely and voluntarily given.

In addition, Your Honor, the note that those items that were found, particularly the money, the vehicle, the observations of the vehicle, supposedly, according to the officer, what appeared to be blood, which turned out not to be blood, the description, the discovery of the vehicle, the ability to look at the vehicle, the ability to search his house were the sole basis for the warrants that were signed. In the affidavit, very clearly, it states that probable cause. Those were a direct result of the earlier so-called consent.

You know, if the Court finds that the consent was not freely and voluntarily given, Your Honor, then I believe you must also find that anything taken as a result of the search warrant could not be used as well. That's all I have.

MR. ADKINSON: Your Honor, I think that, in looking at the consents, whether or not they were freely and voluntarily given, and listening to Mr. Suggs' testimony and seeing what's there, and the

officers testimony, he knew full well he didn't have to consent to search. He said he recognized that fact and that's why he didn't do that until they had told him about the guns.

I think it also goes to his state of mind about him understanding what was going on. If he was so intoxicated -- You know, on one hand he's saying, "I was so intoxicated I didn't understand what was going on, but I did have enough sense about me to know that I couldn't let them go look in my house because of the firearms." I think that's inconsistent with his state of mind or not knowing what was happening at the time.

The officers did want to question him about the missing girl because there was a missing person. They did do that. They did not place him under arrest. You know, he signed the consents, he gave permission, and, as they said, told the Court, he repeatedly gave permission over and over, verbal permission for the consent, that he didn't have any objection to that. That's when, after those consents to search were signed, that's when the evidence was found, the evidence as far as the money. And, Judge, in looking at the consent, it's, you know, pretty specific: "You may refuse to consent to a search.

You may demand that a search warrant be obtained prior to" -- It goes on and on about what he could do, his right with regard to that search. And he gave permission to do that. And I think that consent is valid and was given voluntarily and the evidence obtained from those searches should not be suppressed.

MR. LOVELESS: Your Honor, may I address one other thing?

THE COURT: Uh-huh.

MR. LOVELESS: I would remind the Court that we are dealing not only with the charge of murder but the charge of possession of a firearm by a convicted felon, possession of a weapon by a convicted felon. Those also are there, too.

THE COURT: I have a question, and I'm not sure that I can articulate it just yet. I may have to look back over this. But I'm gonna give it a try. Mr. Loveless, your motion to suppress is an attack on State's Exhibit 1 and 2, the consent to search authorization?

MR. LOVELESS: Partially, yes.

THE COURT: Okay. Because when I initially read it, I read it more broadly than that.

MR. LOVELESS: The intent, Your Honor,

was more broad than that. May I ask the Court what -- Does the Court believe that I intended only to attack those particular items?

THE COURT: Well, my questions are this, in terms of looking at it, taking the evidence through the legal hoops. You know, I look at the initial stop.

MR. LOVELESS: Yes, ma'am.

THE COURT: Then other questions include whether there was an interrogation and, if so, was the interrogation custodial; you know, some of those hoops. Okay. Now, if my, if you are directing my attention to the State's Exhibits 1 and 2, the consent to search forms that Mr. Suggs has signed, does that then -- when effect does that have in terms of my going through the hoops, if I might use that term, as it relates to the issues of whether a reasonable person would have considered theirselves to be detained and not free to leave there alongside the road, for example? Is that even material?

MR. LOVELESS: Your Honor, we're not attacking, first, we're not attacking the stop.

THE COURT: Okay.

MR. LOVELESS: In other words, we believe that the officers had a reasonable suspicion

to conduct an investigative stop.

THE COURT: Okay.

MR. LOVELESS: However, what the motion goes to is the fact that once he was taken to the substation, placed in the back of a patrol car, taken down to the substation and detained there, then that was not a voluntary detention, nor was there probable cause to detain him. Therefore, anything that resulted from that, then it's incumbent upon the State to show, I believe, beyond a reasonable doubt, that any consent that he gave was voluntary and that anything that came from that consent should be admissible. Once the -- If, if the Court finds that he was in fact detained and that that detention was without consent or probable cause, then the burden on the State increases. And our contention is that everything that came as a result of that, we believe it to be an illegal detention and we believe that everything that came as a result of that should be suppressed.

THE COURT: How long could that investigative stop have gone on without it rising to the level of an illegal detention if you have no problem with the investigative stop?

MR. LOVELESS: I believe the case law

would be very clear. It would support the officers' questioning of him there at the scene and no place else. Once he is placed in the back of the patrol car, once he is taken to the substation, then they, they must have probable cause, if that becomes a detention, they must have probable cause for that detention. They have nothing more than the information to substantiate the stop. And until they were able to get the consent to search signed, they had nothing that even came close to probable cause, Your Honor. I don't think they could take him anywhere without either a consent or probable cause.

THE COURT: Mr. Adkinson, do you care to respond?

MR. ADKINSON: Well, they had, they had, you know, reason to question this particular individual because of the identity of the vehicle and the identity of the suspect being last seen with her. And they were investigating, you know, her. So they had reason to question him about the identity -- I mean, about the incident, which is what they did. They explained that to him. They asked him would he come -- He said, you know, he said they asked him would he come to the substation and his response was, "Yes, I told them I would." He showed them how to

drive his vehicle down there. Now, you know, you're right, they placed him in the back of the vehicle, the evidence is clear on that, they placed him in the back of that other vehicle. But they asked him would he come down there. That's what Officer Sunday testified to. His own testimony was he asked him would he come to the substation and his response to him was yes, for questioning about the girl, because of an incident there at the scene. Now he says, "Well, in my mind, I didn't have no choice but to go down there." You know, they never told him, "You don't have a choice. You've got to go." They asked him, "Would you come to the substation and talk about the incident?" And it's not what is believed in his mind. I think we just went through it yesterday, or maybe the day before, on one of these cases. I've forgotten. It's, I think, the "reasonable man" standard, what a reasonable person would believe at the time.

THE COURT: Okay. For sake of argument, if I were to conclude that it was a custodial interrogation at the substation, does that taint the consent that was then given in writing to search the house or vehicle?

MR. ADKINSON: I don't think it does.

I don't have any case law at this point to present to the Court, but I don't believe that it does, because of the language and everything in that consent to search. He, you know, he offered it before he signed it. But it goes -- It's pretty specific in there. It's almost like a Miranda warning situation, if you read it. You know, "You have a right not to do this. At any time during the search you want to revoke that, you can do so." He read that. He was fully aware of that. And he, knowing all that, he gave his permission to do so. So, I mean, if you find it was custodial, I still think that that, the consent to search in the form that it's given, would be clear on that.

THE COURT: What is your response to that, Mr. Loveless?

MR. LOVELESS: Well, I agree to the extent that the simple fact that it is a, if the court finds that it was a custodial search -- or a custodial questioning, that does not necessarily mean that the consents are not valid. What it does mean is that the Court has found improper or illegal activity on the part of the sheriff's department. Therefore, then the standard of proof to show the voluntariness of that consent increases and I believe

the law is that the State must then show beyond a reasonable doubt to the Court that that consent was validly given and that the illegal and improper custody at that time had no affect on that consent.

THE COURT: Okay. I heard two steps in that. Now, there may not have been two, but I heard two. One, proved beyond a reasonable doubt that the consent was voluntary and, two --

MR. LOVELESS: No. No.

THE COURT: Say it again.

MR. LOVELESS: As a part of that, part of finding beyond a reasonable doubt, the Court would have to find that the illegal detention did not contribute to the consent.

THE COURT: Okay. And then how do I deal with that question since they --

MR. LOVELESS: Your Honor --

THE COURT: I mean, would you not take it -- Go ahead.

MR. LOVELESS: Most of, most of the cases have talked about the time involved. Was the person -- how long a period of time was the person in custody? Was he being questioned continuously during that period of time? Is there a break in there whereby the person may then have time to think about

it or possibly get other advice or to consider, okay, well, I know that they've got me here and I really don't have to consent but I think I will go ahead and voluntarily consent, that type of action. I believe that's what most of the cases say. And I think, as a matter of fact, the testimony here has shown that there was no such time for reflection, that the signing of the so-called consent forms came as a direct result of a continuous questioning during an illegal custodial interrogation.

THE COURT: Okay, sir. Anything further then, Mr. Adkinson?

MR. ADKINSON: No, ma'am.

THE COURT: All right. I would like an opportunity to look over the search, the consent to search forms. Is there anything further that you need to address on behalf of your client?

MR. LOVELESS: I don't think so. One moment, Your Honor.

THE COURT: All right, sir.

(PAUSE)

MR. LOVELESS: I have nothing further, Your Honor.

THE COURT: All right, sir.

APPENDIX E

BEST AVAILABLE COPY

AFFIDAVIT
FOR SEARCH WARRANT

IN THE FIRST JUDICIAL CIRCUIT IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF WALTON

BEFORE ME, Honorable Lewis Lindsey, County Judge, in and for Walton County, Florida, personally came Investigator Stephen Sunday who, being first duly sworn, deposes and says: That affiant is a citizen and resident of said Walton County, State of Florida and that he has reason to believe and does believe that those certain premises located in Walton County, Florida, described as follows, to wit: beginning at the intersection of Hwy 98 and Hwy 331 travel north on Hwy 331 approximately 1.5 miles to a unnamed graded road that travels in an easterly direction. This unnamed graded road lies between the Union 76 gas station identified as the 331 Mini Mart to the south and the Adkinson Construction Co which lies to the north of the unnamed graded road. Turn right or east for approximately 1/10th of a mile to a white block house on the left or north side of the unnamed graded road. Said house is on Bay front property. A silver mail box with the name of L.S. Suggs is in front of said house on the north side of the unnamed graded road. The property is further described as having a white block structure in front of the house and setting just south of the main dwelling. This structure appears to be a car garage with a metal roll up type garage door. A wooden sign above said metal type garage door is imprinted with the name

(SEE ATTACHMENT)A

being the premises occupied by or under the control of ERNEST DONALD SUGGS and there is now being kept on said premises certain evidence and contraband which is being kept and used in violation of the Laws of the State of Florida,

to wit: the Laws prohibiting MURDER F.S. 782.04 & ROBBERY F.S. 812.13.
That the facts tending to establish the grounds for this application and the probable cause of affiant believing that such facts exist are as follows: See ATTACHMENT B

FILED
AUGUST 15 1990
CATHERINE KING
CLERK COUNTY COURT
WALTON COUNTY, FL

WHEREOF, affiant makes this affidavit and prays the issuance of a search warrant in due form of law for the search of the above described premises for the said property, heretofore described and for the seizure and safe keeping thereof, subject to the order of this Honorable Court, by the duly constituted officers of the law.

/s/Stephen R. Sunday

Sworn to the subscribed before me this 7th day of August, A.D., 1990.

/s/ Lewis R. Lindsey
County Judge,
Walton County, Florida

ATTACHMENT A

THE SUGGS LORETTA ERNIE JACK LARRY. Also setting on the property is a smaller white block building which is in front and to the west of the main dwelling. This building and the garage building is covered with a green asphalt type shingle. The main dwelling has what appears to be a new tan brown asphalt type shingle roof. The two buildings are detached from the main dwelling. The front entrance door to the main drive faces south which enters into a small screened porch. North of the main dwelling extending over the Chactawhatchee Bay, a wooden dock leads to two white wooden buildings an[sic] or boat house. Green asphalt type shingles covers the roof of these two wooden structures. These are the buildings to be searched

ATTACHMENT B

On August 6, 1990 a call was received from the Teddy Bear bar located on Hwy 30A east Santa Rosa Bch, Walton Co Fl. The caller advised that employee Pauline Denise Casey was missing from the bar and approximately $200.00 was missing from the cash register. Officer arrived at the bar and determined that Mrs. Casey's purse, car keys, glasses, and vehicle was still at the Teddy Bear Bar. A witness was located who stated that when he left the bar, Mrs. Casey and a white male unknown to him was shooting a game a[sic] pool when the witness left the bar parking lot the only vehicle other than Mrs Casey's vehicle in the parking lot was a green jeep station wagon type vehicle. The description of the white male and the jeep vehicle was given to Deputies. A vehicle fitting the description was stopped by Deputy at approximately 0500 on August 7, 1990 on south Hwy 331. The driver of the vehicle matched the description given to the Deputies. Tire tracks at the Teddy Bears parking lot resembled the tires on the jeep. The driver of the jeep stated that he had been at the Teddy Bear Bar that evening. A permission to search the jeep and the residence of the driver was signed by Ernest Donald Suggs. During the search of the residence, approximately $173.00 in small bills were found in an[sic] bathroom sink. Numerous firearms and folding and hunting knifes[sic] were also observed i[sic] the residence. The search was discontinued to allow FDLE technicians to arrive for further process of the dwelling and vehicle. Tire track impressions were found on a two rut road leading to where the body of Mrs Casey was found. These tire track impressions resembled the tires observed on the green jeep vehicle. There was a great amount of blood observed on the ground near the body. There appears to be blood located on the passenger side of the green jeep.

AFFIDAVIT
FOR SEARCH WARRANT

IN THE FIRST JUDICIAL CIRCUIT IN AND FOR WALTON COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF WALTON

BEFORE ME, HONORABLE JUDGE LEWIS R. LINDSEY, County Judge, in and for Walton County, Florida, personally came INV. STEPHEN SUNDAY who, being first duly sworn, deposes and says: That affiant is a citizen and resident of said Walton County, State of Florida and that he has reason to believe and does believe that those certain vehicle located in Walton County, Florida, described as follows, to wit: 1967 2dr Jeepster Commando 4 wheel drive Green in color Alabama Tag # 11HA860 Vin# 8705F1417182 and having a black and white C.B. antenna
The above described vehicle is located at the South Walton Sheriffs Substation Hwy 393 South Santa Rosa Bch FL.
being the vehicle occupied by or under the control of ERNEST DONALD SUGGS and there is now being kept on said VEHICLE certain evidence and contraband which is being kept and used in violation of the Laws of the State of Florida, to wit: the Laws prohibiting MURDER F.S. 782.04 & ROBBERY F.S. 812.13.
That the facts tending to establish the grounds for this application and the probable cause of affiant believing that such facts exist are as follows: See Attachment A

FILED
AUGUST 15 1990
CATHERINE KING
CLERK COUNTY COURT
WALTON COUNTY, FL

WHEREOF, affiant makes this affidavit and prays the issuance of a search warrant in due form of law for the search of the above described premises for the said property, heretofore described and for the seizure and safe keeping thereof, subject to the order of this Honorable Court, by the duly constituted officers of the law.

/s/ Stephen R. Sunday

Sworn to the subscribed before me this 7th day of August, A.D., 1990.

/s/ Lewis R. Lindsey
County Judge,
Walton County, Florida

See Attachment A

On August 6, 1990 a call was received from the Teddy Bear bar located on Hwy 30A east Santa Rosa Bch, Walton Co Fl. The caller advised that employee Pauline Denise Casey was missing from the bar and approximately $200.00 was missing from the cash register. Officer arrived at the bar and determined that Mrs. Casey's purse, car keys, glasses, and vehicle was still at the Teddy Bear Bar. A witness was located who stated that when he left the bar, Mrs. Casey and a white male unknown to him was shooting a game a[sic] pool when the witness left the bar parking lot the only vehicle other than Mrs Casey's vehicle in the parking lot was a green jeep station wagon type vehicle. The description of the white male and the jeep vehicle was given to Deputies. A vehicle fitting the description was stopped by Deputy at approximately 0500 on August 7, 1990 on south Hwy 331. The driver of the vehicle matched the description given to the Deputies. Tire tracks at the Teddy Bears parking lot resembled the tires on the jeep. The driver of the jeep stated that he had been at the Teddy Bear Bar that evening. A permission to search the jeep and the residence of the driver was signed by Ernest Donald Suggs. During the search of the residence, approximately $173.00 in small bills were found in an[sic] bathroom sink. Numerous firearms and folding and hunting knifes[sic] were also observed i[sic] the residence. The search was discontinued to allow FDLE technicians to arrive for further process of the dwelling and vehicle. Tire track impressions were found on a two rut road leading to where the body of Mrs Casey was found. These tire track impressions resembled the tires observed on the green jeep vehicle. There was a great amount of blood observed on the ground near the body. There appears to be blood located on the passenger side of the green jeep.

(2)

FILED
MAR 27 1995

Case No. 94-1421

IN THE

Supreme Court of the United States

October Term 1994

ERNEST D. SUGGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

ROBERT A. BUTTERWORTH
Attorney General

RICHARD B. MARTELL
Chief, Capital Appeals
Florida Bar No. 300179
Counsel of Record

CURTIS M. FRENCH
Assistant Attorney General
Florida Bar No. 291692

OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, FL. 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

BEST AVAILABLE COPY

QUESTION PRESENTED

Respondent would restate the questions presented as follows:

I.

SHOULD THIS COURT GRANT THE WRIT TO REVIEW THE FLORIDA SUPREME COURT'S FINDING ON THE UNIQUE FACTS OF THIS CASE THAT PETITIONER VOLUNTARILY AGREED TO ACCOMPANY POLICE TO THEIR SUBSTATION FOR FURTHER QUESTIONING, IN CONFORMITY WITH THIS COURT'S PRECEDENTS, INCLUDING *DUNAWAY v. NEW YORK*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), AND *FLORIDA v. ROYER*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)?

II.

SHOULD THIS COURT GRANT THE WRIT TO REVIEW THE FLORIDA SUPREME COURT'S FINDING THAT PETITIONER VOLUNTARILY CONSENTED TO A SEARCH OF HIS HOME?

III.

SHOULD THIS COURT GRANT THE WRIT TO ADDRESS A FRUIT-OF-THE-POISONOUS-TREE ISSUE NOT REACHED OR ADDRESSED BY THE COURT BELOW?

IV.

SHOULD THE COURT ADOPT A PER SE OR BRIGHT LINE RULE THAT A SUSPECT NOT UNDER ARREST MUST BE SPECIFICALLY ADVISED OF HIS RIGHT TO LEAVE BEFORE HE CAN VALIDLY CONSENT TO SEARCH, IN CONTRAVENTION OF THIS COURT'S CONSISTENT ADHERENCE TO A TOTALITY-OF-THE-CIRCUMSTANCES APPROACH TO EVALUATING THE VOLUNTARINESS OF CONSENTS?

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2-6

REASONS FOR DENYING THE WRIT 7-15

I.

THIS COURT SHOULD NOT GRANT THE WRIT TO REVIEW THE FLORIDA SUPREME COURT'S FINDING ON THE UNIQUE FACTS OF THIS CASE THAT PETITIONER VOLUNTARILY AGREED TO ACCOMPANY POLICE TO THEIR SUBSTATION FOR FURTHER QUESTIONING, BECAUSE SUCH FINDINGS ARE INHERENTLY FACT-BOUND, AND THE FINDING HERE IS ENTIRELY CONSISTENT WITH THIS COURT'S PRECEDENTS, INCLUDING *DUNAWAY v. NEW YORK*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), AND *FLORIDA v. ROYER*, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). 7-11

II.

THE RECORD SUPPORTS THE FLORIDA SUPREME COURT'S DETERMINATION THAT PETITIONER CONSENTED TO SEARCH WHILE AT THE POLICE SUBSTATION 11-13

III.

PETITIONER'S FRUIT-OF-THE-POISONOUS-TREE WAS NOT REACHED BY THE COURT BELOW AND SHOULD NOT BE ADDRESSED IN THIS COURT. 13

IV.

THERE IS NO REASON TO DEPART FROM THIS COURT'S TOTALITY-OF-THE-CIRCUMSTANCES APPROACH TO EVALUATE THE VOLUNTARINESS OF CONSENTS 13-15

CONCLUSION 15

TABLE OF AUTHORITIES

Cases ***Page(s)***

Adickes v. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970) 13

Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) 8

Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) 8, 9, 11

Florida v. Bostick, 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) 9, 11, 14

Florida v. Jimeno, ___ U.S. ___, ___ S.Ct. ___, 114 L.Ed.2d 297, 302 (1991) 13, 14

Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983) 9, 10, 11

Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) 9, 13

Suggs v. State, 644 So.2d 64 (Fla. 1994) 5, 6

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) 8

Thomas v. State, 614 So.2d 468 (Fla. 1993) 8

United States v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) 8

United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980) . . 9, 10, 14

United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985) 9, 14

Constitutions and Statutes

§ 318.14(1), Florida Statutes 8

§ 318.14(2), Florida Statutes 8

Case No. 94-1421

IN THE

Supreme Court of the United States

October Term 1994

ERNEST D. SUGGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

OPINION BELOW

The opinion below is published at 644 So.2d 64 (Fla. 1994). Petitioner's Appendix A appears to be an accurate reproduction.

JURISDICTION

Respondent accepts Petitioner's jurisdictional statement.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement as to the Constitutional provisions involved.

STATEMENT OF THE CASE

Respondent does not accept Petitioner's statement of the case as being sufficiently accurate and complete, and offers the following statement of the case.

The victim, Pauline Casey, was the sole employee working at the Teddy Bear Bar in Walton County, Florida, on the evening of August 6, 1990. Late that evening, the bar was found abandoned.Its front door was ajar and only some coins were left in the register; all the bills were missing. Although the victim had disappeared, her purse and keys were still inside the bar, and her car was parked outside. (R2220-2226).

After investigation, the police learned that the victim had last been seen alive shooting pool with the only customer left in the bar. (R 2684-85). After obtaining a description of that customer and his vehicle, a BOLO was issued (R 870-71).

Early in the morning of August 7, a sheriff's deputy noticed a speeding vehicle in front of him (R 854). He testified:

> The speed limit was fifty-five prior to going on by the 331 mart, but it dropped down to thirty-five in the construction going on at the bridge. And my patrol car, I was doing sixty, and I still wasn't gaining on the vehicle even across the bridge. I speeded up to sixty-five and the vehicle was still pulling away from me. And that's the reason I was in pursuit, more or less, to see why he was speeding. I didn't know who it was at that time. I was trying to get up there to it so I could see who it was and stop it from speeding. (R 863).

About a mile past the bridge, the vehicle made a u-turn. As it drove toward and past the patrol car, the deputy saw

that the vehicle fit the description in the BOLO (R 854-55). The deputy turned on his patrol vehicle's blue flashing lights and pulled over the speeding vehicle, which was being driven by the Petitioner (R 856-57). The deputy asked for and obtained Petitioner's driver's license, and told Petitioner to "sit where you are" until "some more officers" came over (R 856). The deputy then returned to his patrol car to "call in" Petitioner's driver's license.

The Petitioner, meanwhile, exited his vehicle, approached the deputy and stated, "I've got to tell you...I'm on probation...[for] murder." The deputy placed his hand on his gun — without drawing it — and ordered Petitioner back to his car (R 857).

Within three minutes of the time Petitioner's vehicle was first spotted, investigators with the Walton County Sheriff's office arrived at the scene of the stop (R 872). At this point, they did not know Casey was dead, but they did suspect an abduction and a robbery (R 874, 889). Officer Sunday asked Petitioner "if he had no objections, would he come to the substation and talk to us" about an "incident" at the Teddy Bear Bar (R 873). Petitioner answered, "sure"; he "agreed to come to the substation." (R 873). Sunday testified that Petitioner was not under arrest, was not in custody, and was free to leave (R 873, 876). Sunday also asked Petitioner that "if he didn't mind anyone driving his vehicle, there was someone there that could." (R 887-88). Petitioner not only agreed (R 907), he "actually started showing me how to operate the vehicle...There was some type of catch or something" (R 888).

Petitioner rode to the substation in a patrol car (R 888). Officer Mann drove Petitioner's vehicle to the substation, locked it and carried the keys inside (R 908). He may or may not have retained custody of the keys (R 890). In any event, he and Officer Sunday interviewed Petitioner. They told

him that they were "investigating a missing bartender from Teddy Bear's Bar and that...he matched the description of the last person that was seen at the Teddy Bear bar." (R 875). Petitioner admitted being at the bar and talking to Casey (R 876, 900), but claimed she was "fine" when he left. The investigators asked him if he would object to a search of his home (R 875) to "eliminate" him as a possible suspect regarding the missing woman (R 880). Petitioner expressed a concern that there were guns in his home and that because he was on parole, he was afraid of what might happen if guns were found. (R 879). After reaching an agreement with the officers not to charge him with the illegal possession of any weapons in his home, Petitioner signed a consent to search his home (R 876, 880, 897).

Petitioner's own testimony establishes not only that he was basically familiar with his rights (because he had "been through the system" in Alabama, having been convicted of murder and assault with intent to murder), but that he *knew* he did not have to sign a consent to search his home (R 937). His knowledge of his rights is "why I wouldn't sign it until they came back and told me they didn't care about anything in the house except the girl" (R 936).

During the consent search of Petitioner's home, the police found almost two hundred dollars in small denomination bills in a bathroom sink. (R 2739, 2740). Meanwhile, another officer, using a photograph of a tire print from Petitioner's vehicle (which was not otherwise searched until after his arrest), found the victim's body twenty-five feet from a dirt road three to four miles from the bar where she had worked.

Petitioner was arrested after the body was found. Search warrants were obtained and police discovered other evidence, summarized in the opinion below, additionally connecting Petitioner to the murder:

> ...one of the three known keys to the bar and a beer glass similar to those used at the bar were found in the bay behind Suggs' home; the victim's palm and fingerprints were found in Suggs' vehicle; and a serologist found a bloodstain on Suggs' short that matched the victim's blood. Additionally, after his arrest, Suggs told two cellmates that he killed the victim.

Suggs v. State, 644 So.2d 64, 66 (Fla. 1994).

Petitioner's motion to suppress was heard prior to trial (R 849-948) (Petitioner's Appendix D). Petitioner's attorney conceded the validity of the initial stop, stating "we're not attacking the stop.... we believe that the officers had a reasonable suspicion to conduct an investigative stop." (R 942-43). He argued, however, that the trip to the substation "was not a voluntary detention, nor was there probable cause to detain him." Therefore, he argued, the burden was on the State to prove "beyond a reasonable doubt" that Petitioner's consent to search was "voluntary" (R 943).

The trial court denied the motion to suppress. The court found that the initial stop of Petitioner's vehicle was a valid traffic stop for speeding and/or a valid investigative stop; that Petitioner was not placed under arrest at the scene; that Petitioner consented to accompany the officers to the station; that even if the trip to the substation was nonconsensual, Petitioner's conduct at the substation created a valid waiver; and that Petitioner voluntarily consented to the initial search of his home. (Petitioner's Appendix C).

The denial of Petitioner's motion to suppress was affirmed on appeal. The Florida Supreme Court held:

> Suggs next contends that the trial judge erred by denying Suggs' motion to suppress the evidence found at his home, claiming that his initial deten-

> tion by police was illegal and that the consent form he signed agreeing to allow the law enforcement officers to search his home was improperly obtained. We disagree. At the time Suggs was stopped, no one even knew the victim was dead; the officers were looking for Suggs simply to determine if he knew the victim's whereabouts. Additionally, Suggs was legitimately stopped by the officer because he was speeding. Further, Suggs voluntarily agreed to accompany the officer to the station, even going so far as to show another officer how to drive his vehicle. Finally, once at the station, Suggs not only voluntarily agreed to allow officers to search his home — he did so only after reaching an agreement with the officers not to charge him with the illegal possession of weapons that he kept at his home.

Suggs v. State, supra, at 68.

The affirmance of the denial of Petitioner's motion to suppress is the subject of the instant Petition for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I

THIS COURT SHOULD NOT GRANT THE WRIT TO REVIEW THE FLORIDA SUPREME COURT'S FINDING ON THE UNIQUE FACTS OF THIS CASE THAT PETITIONER VOLUNTARILY AGREED TO ACCOMPANY POLICE TO THEIR SUBSTATION FOR FURTHER QUESTIONING, BECAUSE SUCH FINDINGS ARE INHERENTLY FACT-BOUND, AND THE FINDING HERE IS ENTIRELY CONSISTENT WITH THIS COURT'S PRECEDENTS, INCLUDING *DUNAWAY v. NEW YORK,* 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), AND *FLORIDA v. ROYER,* 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983).

Petitioner's argument here has three components. First, he hints — but does not clearly contend — that the initial stop of Petitioner was unjustified. Second, even if justified initially, the scope of the stop, he contends, was expanded unconstitutionally. Third, the Florida Supreme Court's conclusion that Petitioner "voluntarily agreed" to accompany the police to the substation was not supported by the record. Respondent will address these arguments in order.

A.

Initially, Respondent must take issue with Petitioner's assertion that it is "undisputed" that when Petitioner was stopped "the police did not even know that a crime had been committed," and that as a consequence, the Florida Supreme Court "tried to justify Petitioner's stop based upon a claim that he was speeding," even though under Florida law, speeding "does not subject a person to arrest." Petition for Writ of Certiorari at p.8.

Although the police did not know when they issued the BOLO that the victim was dead, they did know that the bar where she was supposed to be working had been abandoned, that almost $200.00 in bills was missing from the cash register and that, while the victim was nowhere around, her car, purse and keys were still at the bar. On these facts, the police had ample justification for concluding that a crime probably had been committed. The further fact that the victim had last been seen alive shooting pool with the Petitioner warranted a reasonable suspicion that petitioner was involved in her disappearance.

Moreover, it is true that speeding is defined as a "non-criminal infraction." Florida Statutes Section 318.14(1). However, police are authorized to issue citations for such noncriminal infractions. Florida Statutes § 318.14(2). It would be nonsensical to interpret Florida law not to authorize traffic stops. *Thomas v. State,* 614 So.2d 468 (Fla. 1993).

In fact, Petitioner's attorney conceded at trial that the initial stop was proper. However, with or without this concession, the initial stop clearly was justified on either of two grounds, i.e., as a valid traffic stop or as a valid investigative stop. *See United States v. Brignoni-Ponce,* 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); *Berkemer v. McCarty,* 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

B.

Of course, the intrusiveness of such a detention must be appropriately limited in scope. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Reasonable suspicion alone will not justify transporting a suspect involuntarily to a police station for questioning. *Dunaway v. New York,* 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979); and it is questionable whether reasonable suspicion alone would justify an involuntary detention lasting on hour and a half.

United States v. Sharpe, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985).

However, it is clear that law enforcement officers may solicit the voluntary cooperation of citizens in criminal investigations, whether or not that citizen is a suspect. *Florida v. Bostick,* 501 U.S. 429, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991); *United States v. Mendenhall,* 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *Schneck*loth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

The evidence and the factual conclusions of the lower courts in this case distinguish it from *Dunaway v. New York, supra,* and *Florida v. Royer,* 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983), which Petitioner contends the Florida Supreme Court overlooked (even though both cases were discussed and argued by both parties on appeal).

The police who transported Dunaway to the station had been ordered to "pick up" Dunaway and "bring him in." *Dunaway v. New York, supra,* 442 U.S. at 203. He would have been physically restrained if he had tried to leave. *Ibid.* Significantly, the trial court determined from the evidence that Dunaway did not accompany the police voluntarily.

The police who transported Royer to their office failed to elicit Royer's agreement to accompany them. *Florida v. Royer, supra* at 494. Moreover, the state conceded at oral argument that Royer would not have been free to leave, *id.* at 496, and the testimony of the officers indicated they would have conducted a search whether Royer agreed to one or not. On this evidence, the Florida Court of Appeals concluded that Royer had not voluntarily consented to accompany the officers or to the search. *Id.* at 495, 503.

In this case by contrast, there was no order to "bring [petitioner] in." There was no testimony that he would have

been physically restrained if he had tried to leave. There has been no concession by the State at any time that Petitioner would not have been free to leave. Moreover, although Petitioner argues to the contrary (Petition for Writ of Certiorari at p. 14), the testimony shows that Petitioner could have driven his vehicle to the station if he had chosen to do so, or he could have driven away if he had chosen not to accompany the police to the substation. He was, as the police officers testified, free to leave. Although there were several officers at the scene, none of them ever drew their weapons, nor was Petitioner ever handcuffed. Within minutes after lawfully stopping the Petitioner, the police asked him if he would come to the substation. He readily assented.

On this record, the Florida Supreme Court agreed with the trial court's determination that Petitioner voluntarily accompanied the police to the substation.

C.

There is no "litimus-paper test for distinguishing a consensual encounter from a seizure or for determining when a seizure exceeds the bounds of an investigative stop." *Id.* at 506. There will be such "endless variations in the facts and circumstances" of each encounter that it is unlikely that "the courts can reduce to a sentence or a paragraph a rule that will provide unarguable answers to the question whether there has been an unreasonable search or seizure." *Id.* at 506-07. Thus, this Court has repeatedly deferred to the lower court's factual determinations as to whether or not a defendant has voluntarily consented. *See United States v. Mendenhall, supra,* 446 U.S. at 558 ("while these factors [allegedly indicating coercion] were not irrelevant,...neither were they decisive, and the totality of the evidence in this case was plainly adequate to support the District Court's finding that the Respondent voluntarily

consented to accompany the officers..."); *Florida v. Royer, supra,* at 507 ("the Florida District Court of Appeal cannot be faulted in concluding that the limits of a Terry-stop had been exceeded"); *Dunaway v. New York, supra,* at 207 (fn. 6) ("Respondent contends that Petitioner accompanied the police voluntarily and therefore was not seized.... The County Court found otherwise..."). *Cf. Florida v. Bostick, supra,* 115 L.Ed.2d at 400 ("Nevertheless, we refrain from deciding whether a seizure occurred in this case. The trial court made no express findings of fact, and the Florida Supreme Court rested its decision on a single fact — that the encounter took place on a bus — rather than on the totality of the circumstances).

Both the trial court and the Florida Supreme Court examined the totality of the circumstances of this encounter and rendered a judgment: Petitioner consented to accompany the police to the substation. The record is plainly adequate to support that judgment. Unless this Court merely wants to second-guess the evidence and the reasonable inferences to be drawn from that evidence, there is no reason to grant the writ based on Petitioner's claim of illegal arrest.

II

THE RECORD SUPPORTS THE FLORIDA SUPREME COURT'S DETERMINATION THAT PETITIONER CONSENTED TO SEARCH WHILE AT THE POLICE SUBSTATION

Petitioner's argument here depends primarily upon his claim that he was arrested illegally prior to consenting to search. As Respondent argues above, there is no reason to review the Florida Supreme Court's determination that there was no illegal arrest.

Moreover, Respondent would note that at the motion to suppress hearing, Petitioner did not argue that the prosecutor had any burden to establish "a break in the chain of illegality," as he now argues. Instead, he argued that the state had the burden to prove "voluntary" consent "beyond a reasonable doubt." (R 943). Thus, it is questionable whether he has even preserved the issue he raises here.[1] There is no definitive answer from the Florida Supreme Court on the preservation issue in this case, because it was not necessary to reach it; the Florida Supreme Court's agreement with the trial court's determination that Petitioner voluntarily went to the substation mooted any issue of any "break in the claim of illegality."[2]

As for the issue of voluntariness of the consent, respondent would note that it is unnecessary to speculate about or infer what Petitioner knew. By his own admission, Petitioner not only knew he had the right to refuse to consent to the search of his residence, he exercised that right by refusing to consent until the police agreed to his terms. The record shows that Petitioner was convinced the police could find nothing to connect him to the murder of Pauline Casey (R 3537, 3538, 3400); once he negotiated to his satisfaction about the only matter of concern to him (the guns in the house), he readily consented to its search.

Again, the record supports the judgment of the courts below, and there is no reason to grant the writ to second-guess those factual determinations.

---

1 *See Peterka v. State*, 640 So.2d 59, 67 (Fla. 1994).

2 Respondent would note, however, that the trial court found that even if there was a nonconsensual trip to the substation, Petitioner's "conduct at the substation created a valid waiver." (R 838).

III

PETITIONER'S FRUIT-OF-THE-POISONOUS TREE WAS NOT REACHED BY THE COURT BELOW AND SHOULD NOT BE ADDRESSED IN THIS COURT.

Because the Florida Supreme Court did not find any illegal conduct by the police, it had no occasion to and did not address any fruit-of-the-poisonous-tree argument. Absent exceptional circumstances, this Court does not consider matters not decided by the court below. *Adickes v. Kress & Co.,* 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). In any event, because no fruit-of-the-poisonous-tree issue can arise unless and until this Court concludes, contrary to the Florida Supreme Court, that Petitioner was illegally detained, this question does not establish an independent reason for granting the writ.

IV.

THERE IS NO REASON TO DEPART FROM THIS COURT'S TOTALITY-OF-THE-CIRCUMSTANCES APPROACH TO EVALUATING THE VOLUNTARINESS OF CONSENTS.

This court has "long approved consensual searches." *Florida v. Jimeno,* ___ U.S. ___, ___ S.Ct. ___, 114 L.Ed.2d 297, 302 (1991). The voluntariness of the consent is to be judged by the totality of the circumstances. *Schneckloth v. Bustamonte, supra,* 412 U.S. at 227. Voluntariness does not turn "on the presence or absence of a single controlling criterion." *Id.* at 226. "The issue cannot be resolved by any infallible touchstone." *Id.* at 229. Hence, this Court specifically rejected in *Schneckloth* the suggestion that a subject of a search should be advised of his right to refuse consent before eliciting his consent. Noting that such suggestion

"has been almost universally repudiated by both federal and state courts, and, we think, rightly so," *id.* at 231, this Court observed that it would be "thoroughly impractical to impose on the normal consent search the detailed requirements of an effective warning." Ibid. Later, in *U.S. v. Mendenhall, supra,* this Court reaffirmed that the voluntariness of a consent to search does not depend upon the subject having been informed of her right to decline to cooperate, *id.*, 446 U.S. at 555, but, rather, upon the "totality of all the circumstances." *Id.* at 557.

This Court has consistently eschewed rigid rules concerning all aspects of investigative stops. For example, in *U.S. v. Sharpe, supra,* this Court held: "Much as a 'bright line' rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria." 470 U.S. at 685. A "per se rule" establishing time limits for a Terry stop, would be "fundamentally at odds with our approach in this area." *Id.* at 686.

In fact, the Florida Supreme Court has been reversed twice by this Court because it applied the kind of per-se rule that Petitioner now seeks. When the Florida Supreme Court applied a per-se rule that a consent to a general search for narcotics does not extend to sealed containers within the general area agreed to by the defendant, this Court reversed, "see[ing] no basis for adding this sort of superstructure to the Fourth Amendment's basic test of objective reasonableness." *Florida v. Jimeno, supra,* 114 L.Ed.2d at 303. And in *Florida v. Bostick, supra,* this Court again reversed the Florida Supreme Court for applying a per-se rule prohibiting police searches on buses rather than basing its decision "on the totality of the circumstances." *Id.* 115 L.Ed.2d at 400.

Petitioner's proposed per se rule that police may not seek consent without first warning a subject that he is free to leave "fundamentally" conflicts with this Court's heretofore well-established approach in this area, and Petitioner has cited no case indicating any necessity for requiring the kind of warning he seeks here as a prerequisite to a valid consent.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

RICHARD B. MARTELL
Chief, Capital Appeals
Florida Bar No. 300179

CURTIS M. FRENCH
Assistant Attorney General
Florida Bar No. 291692

OFFICE OF THE ATTORNEY GENERAL
The Capitol
Tallahassee, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

Supreme Court, U.S.
FILED
APR 11 1995
OFFICE OF THE CLERK

CASE No. 94-1421

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

ERNEST D. SUGGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITIONER'S REPLY BRIEF

LARRY D. SIMPSON
Florida Bar No. 176070
KITCHEN, JUDKINS, SIMPSON & HIGH
P.O. Box 10368
Tallahassee FL 32302
(904) 222-6040

Counsel for Petitioner,
Ernest D. Suggs

TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS i

TABLE OF AUTHORITIES . . . . . ii & iii

(I)

WAS THERE AN ILLEGAL ARREST BASED ON THIS COURT'S PRECEDENT OF DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983), WHEN THE PETITIONER WAS TRANSPORTED TO A POLICE SUBSTATION WITHOUT PROBABLE CAUSE AFTER BEING STOPPED AND QUESTIONED BY POLICE OFFICERS? 2

(II)

ARE CONSENTS TO SEARCH GIVEN BY THE PETITIONER AFTER BEING TRANSPORTED TO THE POLICE SUBSTATION THE PRODUCT OF PETITIONER'S ILLEGAL ARREST? 8

(IV)

IS IT SUFFICIENT FOR POLICE OFFICERS TO REMAIN QUIET AND NOT INFORM A SUSPECT OF THE RIGHT TO LEAVE IN ORDER TO UNDERMINE THIS COURT'S PRECEDENT ENUNCIATED IN DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), and FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983)?

. 9

CONCLUSION 10

CERTIFICATE OF SERVICE 10

TABLE OF AUTHORITIES

CASES: *Page(s)*

Dunaway v. New York
442 U.S. 200, 99 S. Ct. 2248,
60 L. Ed. 2d 8 (1979),
. . . . . 2, 4, 6, 7 & 8

Florida v. Royer
460 U.S. 491, 103 S. Ct. 1319,
75 L. Ed. 2d 229 (1983),
. . . . . 2, 4, 6, 7, & 8

Schneckloth v. Bustamonte
412 U.S. 218, 93 S. Ct. 2041,
36 L. Ed. 2d 854 (1973) 7

State v. Garnier
LEXIS 17334 (6th Cir. 1994) 8

Terry v. Ohio
392 U.S. 1, 88 S. Ct. 1868,
20 L. Ed. 2d 824 (1979) 4

Thomas v. State
614 So.2d 468 (Fla. 1993) 3

United States v. Brignoni-Ponce
422 U.S. 873, 95 S. Ct. 2574,
45 L. Ed. 2d 607 (1975) 4

United States v. Chavez-Villarreal
3 F. 3d 124 (5th Cir. 1993) 8

United States v. Maragh
894 F. 2d 415 (D.C. Cir. 1990) 8

United States v. Martinez
808 F.2d 1050 (5th Cir. 1987) 4

United States v. McCraw
920 F. 2d 224 (4th Cir. 1990) 8

United States v. McSwain
29 F.3d 558 (10th Cir. 1994) 8

United States v. Mendenhall
446 U.S. 544, 100 S. Ct. 1870,
64 L. Ed. 2d 497 (1980) 10

United States v. Novak
870 F.2d 1345 (7th Cir. 1989) 4

United States v. Richardson
949 F.2d 1416 (6th Cir. 1991) 4

United States v. Sandoval
29 F.3d 537 (10th Cir. 1994) 8

STATUTES AND RULES:
Section 318.14(2)
Florida Statutes (1994) 3

CASE No. 94-1421

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

ERNEST D. SUGGS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITIONER'S REPLY BRIEF

The arguments raised in Respondent's Brief in Opposition are contrary to this Court's clear Fourth Amendment precedent. As such, the arguments fail to demonstrate why the Petition for Writ of Certiorari should not be granted. This Reply Brief addresses Respondent's arguments under points I, II and IV of the Petition.

I. THERE WAS AN ILLEGAL ARREST BASED ON THIS COURT'S PRECEDENT OF DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983), WHEN THE PETITIONER WAS TRANSPORTED TO A POLICE SUBSTATION WITHOUT PROBABLE CAUSE AFTER BEING STOPPED AND QUESTIONED BY POLICE OFFICERS.

Respondent's Brief in Opposition[1] to the Petition for Writ of Certiorari conclusively demonstrates that the Florida Supreme Court failed to apply this Court's Fourth Amendment precedent to the facts of this case. There are no "unique facts of this case" as argued by the State. (RBIO-7). The evidence is clear that Petitioner was illegally arrested and that his consents to search were only signed after a prolonged stationhouse detention. It is important to note that Respondent does not argue that probable cause existed at any point in time during the detention. Thus, this Court is squarely faced with a situation where an individual was stopped by the police and transported to the stationhouse for questioning without probable cause, a procedure that this Court has repeatedly condemned. *See* Dunaway v. New York, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 8 (1979), and Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983).

Before this Court, the State argues that Petitioner's initial stop was justified because either 1) he was speeding; or 2) there was evidence that he was involved in the disappearance of Pauline Casey.

---

[1]References to the Respondent's Brief in Opposition to Petition for Writ of Certiorari will be made by the designation (RBIO-page number).

A. Stop Justified-Petitioner was Speeding.

While there is some evidence in the record that Petitioner may have been exceeding the speed limit when he was first observed by Officer Townsend, it is equally clear that the stop was not initiated until *after* Townsend confirmed that the description of the vehicle was consistent with the BOLO that had been issued. (R-854-55). When presented with the compelling evidence of what occurred subsequent to the stop, it becomes abundantly clear that Petitioner was not detained for a violation of the traffic laws of the State of Florida. If this were *in fact* a traffic stop, then why did Officer Townsend not write Petitioner a ticket for speeding? More importantly, why did Townsend need six back-up police officers and four police units to converge on the scene within minutes of the stop.[2] Obviously, Petitioner was not detained for a violation of the traffic laws and, even if he were, he could not be taken into custody for such a violation because it is noncriminal. *See* Section 318.14(2), Florida Statutes (1993).

B. Stop Justified on "Reasonable Suspicion."

Respondent next argues that Petitioner could be detained because the police had a "reasonable suspicion" that he was involved in the disappearance of Pauline Casey.

---

[2]The Florida Supreme Court has addressed a similar question and held that "when a person is charged with violating a municipal ordinance regulating conduct that is non-criminal in nature, such as in the traffic control area, section 901.15(1) only permits a person to be detained for the limited purpose of issuing a ticket, summons, or notice to appear. *A full custodial arrest in such situations is unreasonable and a violation of the Fourth Amendment and article I, section 12 of the Florida Constitution.*" Thomas v. State, 614 So.2d 468 (Fla. 1993) *(emphasis added)*.

(RBIO-8). The evidence in the record is to the contrary. The police repeatedly testified in the hearing before the trial court that there was no basis to arrest Petitioner (R-876) and that they did not even know that a crime had been committed: "We had no knowledge of any foul play at that point." (R-889). The only evidence that the police had that arguably connected Petitioner to the Teddy Bear Bar was the statement of Ray Hamilton. Hamilton told police that, when he left the Teddy Bear Bar, Pauline Casey was playing pool with a person he described in general terms who was driving a vehicle similar in description to the one being driven by Petitioner. (R-871, 874). Hamilton, however, provided no tag number or other identifying information to police and Hamilton was never called to the scene of the stop to identify Petitioner or his vehicle. Simply put, the police did nothing at the scene of the stop to confirm or dispel their suspicions. Moreover, it is clear that Hamilton left the bar at 9:45 p.m. and that it was not until 11:10 p.m. that Casey was presumed missing, an hour and twenty-five minutes later. (R-2796-98). The police had no information of what occurred in the interim. Therefore, it is questionable whether Hamilton's statement was a sufficient basis to even stop Petitioner's vehicle.

More importantly, even if there existed a "reasonable suspicion," this is insufficient to justify the police transporting an accused to the stationhouse for further questioning. This Court's clear precedent firmly establishes that the accused can only be questioned at the scene of the stop. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); and United States v. Brignoni-Ponce, 422 U.S. 873, 95 S. Ct. 2574, 45 L. Ed. 2d 607 (1975). Here, the police attempted to confirm their suspicions by conditions that approached arrest, a procedure that has been uniformly condemned by this Court as well as lower federal courts. Dunaway & Royer *supra*. *See also* United States v. Martinez, 808 F.2d 1050,

1055 (5th Cir. 1987); United States v. Richardson, 949 F.2d 1416, 1420 (6th Cir. 1991); and United States v. Novak, 870 F.2d 1345, 1350-53 (7th Cir. 1989). Indeed, for all practical purposes, Petitioner was *arrested* at a point in time when there was no evidence that a crime had been committed.

C. The "Unique Facts" of This Case.

Respondent further argues that the facts of this case are "unique" because here Petitioner voluntarily agreed to go to the stationhouse. However, this "voluntary agreement" actually consisted of the police telling Petitioner that they intended to transport him to the station and then asking him if he had any "objections." (R-887). Likewise, Petitioner's vehicle was driven to the station by one of the officers because Petitioner "had no objections for Lieutenant Mann to drive the vehicle in." (R-887). These officers conceded that Petitioner was never told that he was free to leave or given any options other than to go with the officers and to permit them to transport his vehicle. (R-886, 890 & 920). The self serving testimony from the police officers that this was a "voluntary trip" by Petitioner is overwhelmed by the evidence that: (1) After being converged on by a huge police presence, Petitioner's car keys, title and driver's license were taken from him (R-856, 857 & 890); (2) Six police officers in four cars were present at the scene of the stop; (3) Petitioner was transported to the police station securely enclosed in the back of a police car (R-888); and (4) The officers refused to tell him why they were taking him to the police station and would only reveal that they wanted to talk to him "about an incident that occurred in Walton County" (R-872, 885, 897 & 919). During the hearing, the officers *never* explained why they did not question Petitioner about his involvement in the disappearance of the bar maid *right there at the scene of the stop*. These actions by the police clearly demonstrate that Petitioner was transported to the police station, a coercive

atmosphere, where he could be questioned for hours until he ultimately confessed or provided other evidence of his guilt, such as a consent to search. Petitioner was repeatedly accused of involvement in the girl's disappearance while he steadfastly denied knowing anything about it. (R-900-01). When the police did not produce a confession of Petitioner's guilt, the police next insisted that Petitioner permit them to search his car and home so he could "eliminate" himself from their accusations. (R-922). When Petitioner did not immediately accede to their demands for permission to search, the police "negotiated" for that consent and ultimately agreed not to charge Petitioner if firearms were found in his home. This is the first case (to Petitioner's knowledge) where the police were allowed to negotiate their way around an obvious violation of the Fourth Amendment! This Court certainly should not countenance or otherwise sanction this type of illegal police conduct.

Respondent attempts to distinguish Dunaway and Royer because Petitioner was "free to leave" whereas Dunaway and Royer were not. The only evidence that Petitioner was free to leave is the conclusory, uncorroborated, after-the-fact testimony of the police officers that they would have allowed Petitioner to leave. The evidence clearly reflects that the officers *never* told Petitioner that he was free to go (R-886 & 890). The other actions of the officers, especially taking Petitioner into custody and not returning his car keys, driver's license, and car title would convey to any reasonable person that he was *not* free to leave. This is precisely why this Court should grant this Petition: the police were permitted to justify Petitioner's prolonged detention on the basis that he was free to leave, when no reasonable person in Petitioner's position would have concluded that he could simply drive away. It is absurd to permit the police to use their own subjective test to determine when a person is free to leave, especially when the

circumstances demonstrate otherwise. This Court should grant the writ and clarify that the police must inform a suspect that he is free to leave, if the police intend to rely upon that fact to justify a prolonged detention.

Respondent also suggests that Dunaway and Royer can be distinguished because the police never received an agreement from Dunaway or Royer to accompany them. This issue was never addressed in either Dunaway or Royer, but it is clear from a reading of both cases, that Dunaway and Royer agreed to go with the officers. For example, in Royer this Court noted that "the detectives did not return his airline ticket and identification but asked Royer to accompany them to a room, approximately 40 feet away, adjacent to the concourse." Royer, 460 U.S. at 494, 75 L.Ed.2d at 234. Thus, Royer suffered the same fate as Petitioner. Royer's plane ticket and identification were not returned, just as Petitioner's car keys, title and driver's license were not returned. Royer was asked to accompany the officers to a room 40 feet away and Petitioner was asked if he had any "objections" to going to the station several miles away. At a minimum, Petitioner stands in the same position as Royer and should not have been transported from the scene of his encounter with the police. When the other facts are taken into consideration, it is clear that the police conduct here is even more egregious than that in Royer.

II. THE CONSENTS TO SEARCH GIVEN BY THE PETITIONER AFTER BEING TRANSPORTED TO THE POLICE SUBSTATION WERE THE PRODUCT OF PETITIONER'S ILLEGAL ARREST.

Petitioner recognizes that generally, this Court applies a "totality of the circumstances" test in determining the voluntariness of a consent to search. Schneckloth v. Bustamonte, 412 U.S. 218, 222, 93 S. Ct. 2036, 2051, 36 L.

Ed. 2d 857 (1973). It is equally clear, however, that if the consent to search is a product of illegal police conduct, then the evidence seized should be suppressed. *See* Royer *supra;* United States v. Garnier, LEXIS 17334 (6th Cir. 1994); United States v. McSwain, 29 F.3d 558, 560 (10th Cir. 1994); United States v. Sandoval, 29 F.3d 537 (10th Cir. 1994); United States v. Chavez-Villarreal, 3 F. 3d 124 (5th Cir. 1993); United States v. McCraw, 920 F. 2d 224 (4th Cir. 1990); and United States v. Maragh, 894 F. 2d 415 (D.C. Cir. 1990). The burden is on the prosecution to show a break in the chain of illegality. *See* Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2674, 45 L. Ed. 2d 705 (1975). In the case at bar, there is a clear chain of events from Petitioner's illegal arrest to the execution of the consents to search that make the resulting searches a product of the illegal police conduct. Respondent argues that "it is questionable" whether this issue was preserved below. (RBIO-12). The issue was preserved and argued to the trial court by Petitioner's counsel:

> And our contention is that everything that came as a result of that, we believe it to be an illegal detention and we believe that *everything that came as a result of that* should be suppressed. (R-943).
>
> * * *
>
> Was the person -- how long a period of time was the person in custody? Was he being questioned continuously during that period of time? Is there *a break in there* whereby the person may then have time to think about it or possibly get other advice or to consider, . . . [a]nd I think, as a matter of fact, the testimony here has shown that *there was no such time for reflection*, that the signing of the so-called consent forms came as a *direct result of a*

> *continuous questioning* during an illegal interrogation. (R-947-48).
>
> * * *
>
> In the affidavit, very clearly, it states that probable cause. Those were a *direct result* of the earlier so-called consent. (R-939).

(emphasis added).

The evidence in this case reflects that Petitioner's consents to search were the product of illegal police conduct. Respondent has failed to distinguish this Court's controlling precedent or otherwise justify the Fourth Amendment violation. This Court should grant the writ and apply Dunaway and Royer *supra*, to the facts of this case.

IV. IT IS NOT SUFFICIENT FOR POLICE OFFICERS TO REMAIN QUIET AND NOT INFORM A SUSPECT OF THE RIGHT TO LEAVE IN ORDER TO UNDERMINE THIS COURT'S PRECEDENT ENUNCIATED IN DUNAWAY V. NEW YORK, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), AND FLORIDA V. ROYER, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983).

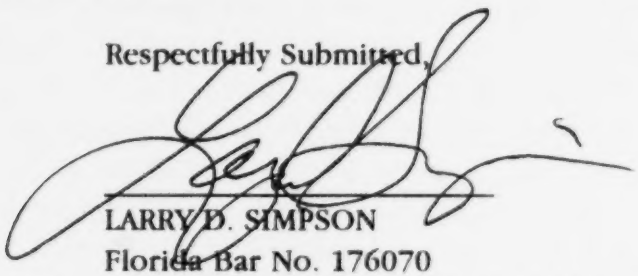
Respondent argues that "the voluntariness of a consent to search does not depend upon the subject having been informed of her right to decline to cooperate." (RBIO-14 *citing* United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)). Mendenhall, however, clearly supports Petitioner's argument because, unlike Royer, in Mendenhall the police returned Mendenhall's "airline ticket and driver's license to her . . . [and then] asked [Mendenhall] if she would accompany him to the airport DEA office for further questions." Mendenhall 446 U.S. at

548, 100 S. Ct. at 1874, 64 L. Ed. 2d at 505. Thus, Mendenhall's personal effects that would enable her to leave were returned. Conversely, if the police do not return these type of personal effects, at a minimum, the detainee should be informed of his right to terminate the police encounter.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be granted.

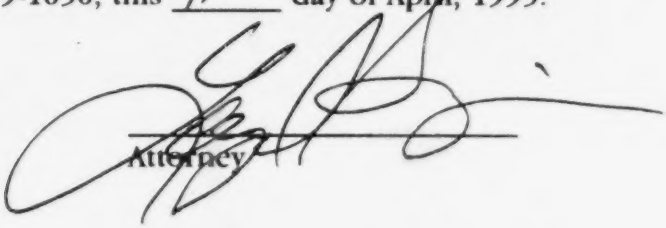
Respectfully Submitted,



LARRY D. SIMPSON
Florida Bar No. 176070
KITCHEN, JUDKINS, SIMPSON & HIGH
P.O. Box 10368
Tallahassee FL 32302
(904) 222-6040
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Robert Butterworth, Attorney General; Richard B. Martell, Chief, Capital Appeals; and Curtis M. French, Assistant Attorney General, Office of Attorney General, The Capitol, Tallahassee, Florida 32399-1050, this 11th day of April, 1995.



Attorney